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ACTS

OF

THE LEGISLATURE

OF

WEST VIRGINIA,

AT ITS

FIRST SESSION,

COMMENCING JUNE 20TH, 1863.

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ACTS.

CHAP. 1.—An ACT in relation to the powers and duties of the Recorder.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia:

In what cases the Recorder is to act in place of clerk of county court.

1. The recorder of every county shall have the same powers and perform the same duties, in relation to receiving acknowledgment or proof of, admitting to record, recording, listing and certifying deeds, contracts, powers of attorney, wills, inventories and other writings; and docketing judgments and decrees, and bonds and recognizances having the force of judgments; and recording *lis pendens* and attachments; and the issuing of marriage licenses, as the clerk of the county court of such county had or was liable to perform, under the laws of Virginia, in force within the limits of this state, on the nineteenth day of June, eighteen hundred and sixty-three; and shall have the like fees for his services as the said clerk was entitled to under said laws, to be collected and accounted for in the same manner.

And to have the same fees.

Records to be delivered over to the Recorder.

2. The parties in charge thereof shall deliver to the recorder of the proper county the books of records of deeds, contracts, powers of attorney, wills, inventories and other writings, and the books in which judgments, decrees, and bonds, and recognizances having the force of judgments, *lis pendens* and attachments, are entered or docketed, and all the other books and papers relating to the duties of his office.

Effect of recorder's acts and certificates.

3. The acts and certificates of the said recorder shall have the same effect as the acts and certificates of the said clerk would have had under the said laws.

4. This act shall be in force from its passage.

CHAP. 2.—An ACT concerning Oaths and Affirmations.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia, as follows:

General provision as to all officers.

1. Every person elected or appointed to any office or trust, civil or military, shall before proceeding to exercise the authority or discharge the duties of the same, make oath that he will support the Constitution of the United States and the Constitution of this state.

Same.

2. He shall also, at the same time, take an oath that he will faithfully perform the duties of his office, to the best of his skill and judgment.

Officers acting in other States.

3. The first section shall not apply to the case of a person residing in another state or country who is appointed a commissioner by the Governor, or designated, pursuant to law, for any agency or service to be performed out of this state.

Who may administer official oaths.

4. The oaths to be taken as aforesaid, may be administered by a justice, notary public, recorder, or judge. And any person residing in another state or country, designated for any agency or service to be performed out of this state, or appointed a commissioner, may take the oath before a justice, notary, or judge of the state or country in which he resides.

Penalty for acting in any office before taking the oath.

5. If any person elected or appointed to any office or trust, civil or military, shall exercise any authority, or enter upon the discharge of any duty pertaining thereto, before taking the proper oath or oaths, he shall forfeit not less than one hundred nor more than one thousand dollars.

Officers of State of Virginia excepted.

But the officers acting within the limits of this State at the time the Amended Constitution thereof went into operation, may continue to exercise the powers and perform the duties of their respective offices, until the officers elected or appointed under the said Constitution, for the discharge of similar duties, be qualified, without being liable to any forfeiture under this Act.

Oath to be certified— certificates how disposed of.

6. The oaths to be taken as aforesaid shall be certified by the persons who administered the same, and the certificates disposed of as follows:

State officers and clerks.

The certificates of the oaths taken by the governor, secretary of the state, treasurer, auditor, attorney general, and adjutant general,

Other civil officers.

and of the clerks employed by them, and of all other civil officers except those afterwards mentioned in this section, shall be filed in the office of the secretary of the state.

Members of Legislature.

The certificates of the oaths taken by senators and delegates shall be filed with the clerks of those branches respectively; or the oaths shall be taken in presence of their respective branches, and the fact be noted on the journal.

Judges of Court of Appeals.

The certificates of the oaths taken by a judge of the supreme court of appeals shall be delivered to and recorded by the clerk of that court.

Circuit Judges.

The certificate of the oaths taken by a judge of a circuit, shall be delivered to and recorded by the clerk of the first court to be held by him.

Clerks of Courts.

The certificate of the oaths taken by the clerk of any court, shall be recorded by such clerk.

County, Township and Municipal officers.

The certificate of the oaths taken by county, township and municipal officers shall be filed with the recorder of the county.

Military officers.

The certificate of the oaths taken by any military officer above the rank of colonel, shall be filed with the adjutant general; and of any other military officer, shall be recorded in the order book of the commandant of the regiment to which such person belongs or is attached.

Affirmation to have the same effect as an oath.

7. Under this act, and in all judicial proceedings, a solemn affirmation shall have, in all respects, the same effect as an oath. And

in the construction of statutes, records, certificates and writings, the word *oath* shall be deemed to include an *affirmation*, and the word *swear* to be complied with, if the person referred to makes solemn affirmation, unless such construction be manifestly inconsistent with the intention.

Legal meaning of the word OATH or SWEAR.

8. Chapter thirteenth of the Code of Virginia, second edition, and all statutory provisions incorporated in said chapter, are hereby repealed.

Law repealed.

9. This act shall be in force from its passage.

CHAP. 3.—An ACT in relation to the Taxes assessed within the several counties under the laws of the State of Virginia.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia:

1. Every commissioner of the revenue for any county now included within this state, shall, within twenty days after the passage of this act, deliver one copy of the land book, and one of the personal property book, made by him for the year eighteen hundred and sixty-three, to the sheriff elected and qualified for such county under the Constitution of this state and the ordinances of the late Constitutional Convention; and such sheriff shall proceed to collect, account for, and pay over according to law, the taxes assessed in the said books.

Commissioners' books for 1863 to be delivered to the new sheriffs.

Who are to collect the taxes for that year.

2. No sheriff or collector of taxes elected or appointed for any county of this State, under the laws of the state of Virginia, shall have authority to collect the taxes assessed in the land or personal property books for the year eighteen hundred and sixty-three, if a sheriff shall have been elected and qualified for such county, under the Constitution of this State and the ordinances aforesaid.

The former sheriffs not to collect such taxes.

3. The sheriffs, elected and qualified under the Constitution of this State and the ordinances of the late Constitutional Convention, of those counties in which the taxes for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, in whole or in part, have not been collected, and where the commissioners' books have not been placed in the hands of a collecting officer, shall proceed to collect and account for the taxes for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two.

Arrears of 1861 and 1862 to be collected by new sheriffs.

4. This act shall be in force from its passage.

CHAP. 4.—An ACT to authorize the Council of the City of Wheeling to raise money by way of loan for the defense of the said city.

Passed June 26, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the council of the city of Wheeling to borrow money in the name of the said city for the defense thereof against

City of Wheeling authorized to borrow money for defense.

invasion; and to convey, mortgage and pledge any of the public property and revenues of said city, for the redemption of such loans and for payment of the interest thereon; and to levy and collect a special annual tax on the real estate in the said city, sufficient to produce over and above the expenses of collection, an annual sum equal to the interest and five per cent on the principal of any debt which may be contracted as aforesaid.

And to provide by tax, for interest and principal.

Banks, &c., authorized to lend the same.

2. It shall be lawful for any bank or branch, savings institution, insurance company, or other corporation in this State, and for any person or firm, to loan money for such time and on such terms as may be agreed upon, on any bond or bonds of the said city which may be issued for the purposes specified in this act.

3. This act shall be in force from its passage.

CHAP. 5.—An ACT relating to Official Bonds.

Passed June 29, 1863.

Be it enacted by the Legislature of West Virginia, as follows:

Official bonds to be payable to the State.

Sureties.

Acknowledgm't or proof required

1. Every bond required by law to be approved by any court, board or officer, shall, unless otherwise provided, be made payable to the state of West Virginia, with one or more sureties deemed sufficient by such court, board or officer, and be proved or acknowledged before such court, board or officer.

Suits thereon may be brought for any party injured.

2. Upon any bond payable as aforesaid, suits may be prosecuted, from time to time, in the name of the state, for the benefit thereof, or of any county, township or person injured by a breach of the condition, until damages be recovered equal to the penalty.

Declaration in such suits.

Security for costs

3. The declaration in such suit shall show for whose benefit it is prosecuted; and the court may, in its discretion, require security for the costs, from any party, except the state, for whose benefit such a suit shall be prosecuted.

Bonds not required to be payable to the State.

4. Any bond to be given upon an injunction, appeal, writ of error, supersedeas, or other proceeding in a civil suit, may be made payable to the party entitled to the benefit thereof; and any bond to be given by any officer of a municipal corporation, or which may lawfully be prescribed by the ordinances of such corporation, may be made payable to the said municipal corporation.

Condition of official bonds.

5. When a person undertaking any office is required by law to give bond, the condition, unless otherwise provided, shall be for the faithful discharge by him of the duties of his office.

The office vacated if bond be not given in time.

Penalty for acting without bond

6. When a person elected or appointed to any office is required by law to give bond, if he fail to do so within the time prescribed by law, the office shall be deemed vacant; and if he act in such office before giving bond as required by law, he shall forfeit not less than one hundred nor more than one thousand dollars.

Time allowed for giving bond.

7. Every person elected or appointed to any office shall be allowed sixty days after his election or appointment in which to qualify and give the bond of his office, unless otherwise provided.

Sheriff's bond.

8. The sheriff of every county shall give bond, to be approved by the circuit court of the county, or the judge thereof in vacation, in such penalty, not less than twenty thousand dollars nor more than ninety thousand dollars, as the said court or judge shall deem sufficient.

Clerk of court of appeals.

9. The clerk of the supreme court of appeals, unless he be clerk *pro tempore*, shall give bond, to be approved by the court, in such penalty, not less than three thousand nor more ten thousand dollars, as the court shall deem sufficient; and the court may prescribe the time within which such bond shall be given.

Clerk of circuit court.

10. Every clerk of a circuit court, unless he be clerk *pro tempore*, shall give bond, to be approved by the court, or the judge thereof in vacation, in such penalty, not less than three thousand nor more than ten thousand dollars, as the court or judge shall deem sufficient.

Recorder.

11. The recorder of every county shall give bond, to be approved by the circuit court for such county, or the judge thereof in vacation, in such penalty, not less than three thousand nor more than ten thousand dollars, as the court or judge shall deem sufficient.

Notary public.

12. Every notary public shall give bond, to be approved by the circuit court for his county, or the judge thereof in vacation, in such penalty, not less than two hundred and fifty nor more than one thousand dollars, as the court or judge shall deem sufficient.

Secretary of the state—auditor—treasurer and public printer.

13. The secretary of the state, auditor, treasurer and public printer shall each give bond, to be approved by the governor. The bond of the secretary of the state shall be in the penalty of five thousand dollars, that of the auditor twenty thousand, of the treasurer twenty-five thousand, and of the public printer five thousand dollars.

Bonds to be submitted to attorney general.

14. Every bond required by law to be approved by the governor, shall be first submitted to the attorney general for examination; and if he be of opinion that it is in proper form and legally executed, he shall make an endorsement thereon to that effect.

Where official bonds are to be kept.

15. The bonds of the treasurer, auditor and public printer shall be filed in the office of the secretary of the state; and the bond of the secretary of the state in the office of the auditor. The bond of the clerk of the supreme court of appeals shall be filed in the office of the clerk of the circuit court for the county in which the supreme court of appeals may sit. The bonds to be approved by the circuit court for any county, or the judge thereof in vacation, shall be filed in the office of the clerk of such circuit court; except that the bond of the clerk of the circuit court shall be filed in the office of the recorder of the county.

Penalty for failure to file official bonds.

16. Any officer giving bond, who shall fail to file the same as aforesaid, shall forfeit not less than one hundred nor more than one thousand dollars.

Copies to be transmitted to the auditor.

17. The clerk of every circuit court, and the recorder of every county shall, within two months after any bond is filed in their offices as aforesaid, transmit a copy thereof to the auditor. If any clerk or recorder fail so to do, he shall forfeit one hundred dollars.

Penalty for failure.

Record of official bonds.

18. The person in whose office any bond is filed, as aforesaid, shall cause the same to be correctly recorded, upon the endorsement thereon of its having been approved according to law. And such record, or a copy thereof, certified by the person in whose office the bond is required by law to be filed, shall be *prima facie* evidence of the execution and contents of such bond. But any court of record, for good cause shown, may require the production of the original bond.

Effect of such record and certified copies.

A new official bond may be required at any time.

19. The court, board or officer by whom any bond is required by law to be approved, may, at any time, require from the officer by whom such bond was given, a new bond to be approved by them. And if the officer so required to give a new bond, being notified of the requirement, fail to comply therewith within the time specified in such notice, his office shall be deemed vacant. But for cause shown, the time for giving such new bond may be extended or the requirement withdrawn.

And the office vacated if not given.

Surety on official bond may be relieved therefrom on petition.

20. When a surety, or his personal representative, of any officer required by law to give an official bond, shall petition the court, board or officer by whom such bond was approved, to be relieved from the suretyship, such court, board or officer, shall, on proof of reasonable notice of the intended motion, require a new bond to be given. And if any officer, who has given an official bond, being so required, shall fail to give a new bond, within the time required, his office shall be deemed vacant. But for cause shown, the time for giving such new bond may be extended.

And office vacated if new bond be not given.

Effect of new bond when given

21. Upon new bond being given and approved according to law, in the cases specified in the last two sections, the sureties in the former bond, and their estates, shall be discharged from all liability for any breach of duty committed by such officer after that time.

Laws repealed.

22. The twenty-fourth section of the eighth chapter; the eighth, ninth, tenth and eleventh sections of the thirteenth chapter; the sixth, seventh, eighth and ninth sections of the eighteenth chapter; the first, second and third sections of the one hundred and forty-sixth chapter; the second section of the forty-ninth chapter; and the seventh section of the one hundred and sixty-third chapter of the Code of Virginia, second edition; and the several statutory provisions incorporated in those sections; and also so much of the first section of the one hundred and twentieth chapter as relates to the bonds of notaries public, are hereby repealed.

23. This act shall be in force from its passage.

CHAP. 6.—An ACT making an appropriation of fifty thousand dollars for procuring arms, equipments, munitions of war, &c.

Passed July 2, 1863.

Be it enacted by the Legislature of West Virginia:

1. The sum of fifty thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of procuring arms, equipments and munitions of war, and for the payment of scouts or any companies employed or ordered into the service of the State. And the auditor is required to pay the said appropriation upon the order or orders of the governor. Appropriation to procure arms, &c. To be paid on order of the Governor.

2. This Act shall be in force from and after its passage.

CHAP. 7.—An ACT for the defense of the State.

Passed July 2, 1863.

Be it enacted by the Legislature of West Virginia:

1. The governor is hereby authorized to procure such arms, equipments and munitions of war as shall be necessary for the defense of the state. Such arms, equipments and munitions shall be issued or distributed by the governor to the loyal male citizens of such counties, and in such numbers and manner, as he may deem best. Governor authorized to procure arms, &c. How such arms &c., are to be distributed.

2. Be it further enacted, That the governor be, and he is hereby authorized to cause to be organized within the several counties of this state, bands of minute men, of persons not subject to military duty, and to pay the same for actual service under such regulations as he may prescribe. Organization of minute men. Pay of same.

3. This Act shall be in force from and after its passage.

CHAP. 8.—An ACT to fix the terms of the several Courts.

Passed July 9, 1863.

Be it enacted by the Legislature of West Virginia:

1. Two sessions of the supreme court of appeals shall be held every year at the seat of government, or such other place as may be appointed for the purpose in conformity with the eleventh, twelfth, and thirteenth sections of the one hundred and sixty-first chapter of the Code of Virginia, second edition. Two sessions of Court of Appeals every year. Where to be held.

2. The said sessions shall begin on the second Thursday of January and the second Thursday of July, respectively, and continue till the business be dispatched. When the circumstances require it, the governor may postpone the time for holding any such session. The time of holding said sessions. The Governor may postpone the same.

3. A circuit court shall be held in every county four times a year; and the commencement of the said terms shall be as follows: Four Circuit Courts to be held every year in each county.

I. In the First Circuit—For the county of Ohio, on the first Tuesday in March, May, October and December; For the county of Han- First Circuit. Ohio County. Hancock.

cock, on the first Tuesday of April, June, September and November; For the county of Brooke, on the second Tuesday of April, June, September and November; and for the county of Marshall, on the third Tuesday of April, June, September and November.

Brooke.

Marshall.

Second Circuit. Monongalia.

II. In the Second Circuit—For the county of Monongalia, on the ninth day of February, the ninth day of May, the tenth day of August and the ninth day of November; For the county of Taylor, on the twenty-third day of February, the twenty-fifth day of May, the twenty-fourth day of August and the twenty-third day of November; For the county of Tucker, on the ninth day of March, the fifth day of June, the seventh day of September and the seventh day of December; and for the county of Preston, on the sixteenth day of March, the thirteenth day of June, the fourteenth day of September and the fourteenth day of December.

Taylor.

Tucker.

Preston.

Third Circuit. Barbour.

III. In the Third Circuit—For the county of Barbour, on the first day of March, the sixteenth day of May, the first day of September and the sixteenth day of November; For the county of Harrison, on the twelfth day of March, the first day of June, the sixteenth day of September and the first day of December; and for the county of Marion, on the first day of April, the sixteenth day of June, the first day of October and the sixteenth day of December.

Harrison.

Marion.

Fourth Circuit. Wetzel.

IV. In the Fourth Circuit—For the county of Wetzel, on the first day of March, and the same day of May, September and November; For the county of Pleasants, on the tenth day of March, and the same day of May, September and November; For the county of Ritchie, on the eighteenth day of March, and the same day of May, September and November; For the county of Gilmer, on the thirtieth day of March, and the same day of May, September and November; For the county of Tyler, on the eighth day of April, and the same day of June, October and December; and for the county of Doddridge, on the twentieth day of April, and the same day of June, October and December.

Pleasants.

Ritchie.

Gilmer.

Tyler.

Doddridge.

Fifth Circuit. Lewis.

V. In the Fifth Circuit—For the county of Lewis, on the first day of March, and the same day of May, September and November; For the county of Upshur, on the fifteenth day of March, and the same day of May, September and November; For the county of Randolph, on the twenty-seventh day of March, and the same day of May, September and November; For the county of Braxton, on the ninth day of April, and the same day of June, October and December; For the county of Nicholas, on the sixteenth day of April, and the same day of June, October and December; and for the county of Webster, on the twenty-third day of April, and the same day of June, October and December.

Upshur.

Randolph.

Braxton.

Nicholas.

Webster.

Sixth Circuit. Jackson.

VI. In the Sixth Circuit—For the county of Jackson, on the first day of March, and the same day of May, September and November; For the county of Roane, on the thirteenth day of March, and the same day of May, September and November; For the county of Calhoun, on the twentieth day of March, and the same day of May, September and November; For the county of Clay, on the twenty-

Roane.

Calhoun.

Clay.

seventh day of March, and the same day of May, September and November; For the county of Wirt, on the fourth day of April, and the same day of June, October and December; and for the county of Wood, on the fifteenth day of April, and the same day of June, October and December. Wirt. Wood.

VII. In the Seventh Circuit—For the county of Mason, on the first day of March, and the same day of May, September and November; For the county of Putnam, on the fifteenth day of March, and the same day of May, September and November; For the county of Fayette, on the twenty-fifth day of March, and the same day of May, September and November; and for the county of Kanawha, on the second day of April, and the same day of June, October and December. Seventh Circuit. Mason. Putnam. Fayette. Kanawha.

VIII. In the Eighth Circuit—For the county of Wayne, on the first day of March, and the same day of May, September and November; For the county of Cabell, on the twelfth day March, and the same day of May, September and November; For the county of Boone, on the twenty-seventh day of March, and the same day of May, September and November; For the county of Raleigh, on the seventh day of April, and the same day of June, October and December; For the county of Wyoming, on the seventeenth day of April, and the same day of June, October and December; and for the county of Logan, on the twenty-sixth day of April, and the same day of June, October and December. Eighth Circuit. Wayne. Cabell. Boone. Raleigh. Wyoming. Logan.

IX. In the Ninth Circuit—For the county of Pocahontas, on the first day of March, and the same day of May, September and November; For the county of Greenbrier, on the eighth day of March, and the same day of May, September and November; For the county of Monroe, on the nineteenth day of March, and the same day of May, September and November; For the county of Mercer, on the twenty-ninth day of March, and the same day of May, September and November; and for the county of McDowell, on the sixth day of April, and the same day of June, October and December. Ninth Circuit. Pocahontas. Greenbrier. Monroe. Mercer. McDowell.

X. In the Tenth Circuit—For the county of Pendleton, on the first day of March, and the same day of May, September and November; For the county of Hardy, on the eleventh day of March, and the same day of May, September and November; For the county of Hampshire, on the twenty-seventh day of March, and the same day of May, September and November; and for the county of Morgan, on the twentieth day of April, and the same day of June, October and December. Tenth Circuit. Pendleton. Hardy. Hampshire. Morgan.

4. Section thirty-four of chapter one hundred and fifty-eight of the said Code of Virginia, is hereby repealed. Law repealed.

5. This act shall be in force from its passage.

CHAP. 9.—An ACT concerning the Hempfield Railroad Company.

Passed July 10, 1863.

WHEREAS, by an act passed by the Legislature of Pennsylvania, approved on the 18th day of April, 1861, it is enacted as follows:

Pennsylvania act recited.

§1. That whenever any railroad, canal, turnpike, bridge or plank road, of any corporation created by or under any law of this state, shall be sold and conveyed under and by virtue of any process or decree of any court of this state, or by the circuit court of the United States, the person or persons for or on whose account such railroad, canal, turnpike or plank road may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim and demand, in law and equity, of, in, and to such railroad, canal, turnpike, bridge or plank road, with its appurtenances, and with all the rights, powers, immunities, privileges and franchises of the corporation, as whose the same may have been so sold, and which may have been granted to, or conferred thereupon, by any act or acts of assembly whatsoever in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby; and the persons for or on whose account any such railroad, canal, turnpike, bridge or plank road. may have been purchased, shall meet within thirty days after the conveyance thereof shall be delivered, public notice of the time and place of such meeting having been given at least once a week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held, and organize said new corporation by electing a president and board of six directors, (to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter, on the said day, a like election for a president and six directors shall be held, to serve for one year;) and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, and shall have power to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each; and may then, or at any time thereafter, create and issue preferred stock to such an amount and on such terms as they may deem necessary, and from time to time to issue bonds, at a rate of interest not exceeding seven per cent., to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part or parts thereof.

Pennsylvania act continued.

§2. That it shall be the duty of such new corporation, within one calendar month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the names of its president and directors, and transmit the said certificate to the secretary of state at Harrisburg, to be filed in his office and there remain of record; and a certified

copy of such certificate so filed shall be evidence of the corporate existence of said new corporation.

Be it therefore enacted by the Legislature of West Virginia:

1. The purchasers of that part of the property now held by the Hempfield Railroad Company within this state, under a decree of any court of this state, or of the district court of the United States, when they shall have purchased that part of said railroad within the state of Pennsylvania, and shall have been organized and incorporated under the above recited act of the legislature of said state, shall have and possess in this state all the rights, powers, immunities and franchises conferred by said act, for which purpose alone the same is hereby adopted and enacted into a law of this state.

The purchasers of the Hempfield Railroad. in this state, be a body corporate when they buy the remainder of the road, &c.

2. It shall be the duty of the corporation, organized under the law of Pennsylvania aforesaid, to file in the office of the secretary of the state of West Virginia, a certified copy of the certificate required by the second section of said act, to be filed in the office of the secretary of the commonwealth of Pennsylvania, which shall also set forth the date of the filing of said certificate, and shall be authenticated by the attestation of said secretary, and the seal of his department; and thereafter the said corporation shall be recognized and taken to be a body politic or corporation in this state; and shall then possess, enjoy and exercise all the rights, powers, immunities and franchises conferred by this act, and by the laws of the state of Virginia relating to the Hempfield Railroad Company, and be subject to all the restrictions imposed by the same; and a certified copy of the certificate filed in the office of the secretary of the state of West Virginia, shall be evidence of the existence of said corporation in this state.

Copy of Pennsylvania certificate to be filed with the Secretary of this state.

3. This act shall be in force from its passage.

CHAP. 10.—An ACT to regulate Criminal Proceedings against Negroes.

Passed July 15, 1863.

Be it enacted by the Legislature of West Virginia:

1. A negro charged with any offense shall be prosecuted and tried in the same manner, and, if convicted, be subjected to the same punishment as a white person; but a negro shall be a competent witness for or against a negro in any criminal proceeding.

Negroes to be tried and punished like white men. Competency of negro as witness.

2. Chapter two hundred and twelve of the Code of Virginia, and the several statutory provisions incorporated therein, are hereby repealed.

Chap 212 of Code of Virginia repealed.

3. This act shall be in force from its passage.

CHAP. 11.—An ACT to prescribe the manner in which money may be paid into the Treasury of the State.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. All money to be paid into the treasury of this state, shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the

How money is to be paid into treasury.

Depositories of State funds.

City of Wheeling, or one of its branches at Point Pleasant, Clarksburg or Morgantown; or into the Northwestern Bank of Virginia, at Wheeling, or one of its branches at Parkersburg or Wellsburg; or into the Exchange Bank of Virginia, at Weston; or into the Fairmont Bank, at Fairmont—to the credit of "the treasury of West Virginia;" and the person so paying the same shall take from the proper officer of such bank or branch a certificate of the fact. The treasurer, on the delivery to him of such certificate, shall retain and file the same, charging the amount therein specified to the proper bank or branch, and delivering to the person who made the payment at bank, duplicate receipts for the amount so paid, specifying on what account the same was paid. The person making the payment shall forthwith hand over one of the said receipts to the auditor, who shall retain and file the same, charging the amount to the treasurer's account, and endorse on the other receipt, which is to be retained by the person making the payment, as follows: "A duplicate hereof has been filed in the auditor's office," and affix his signature and the proper date to such endorsement. And no receipt of the treasurer shall be an acquittance or discharge to any person for any sum of money due this State, unless endorsed by the auditor as aforesaid; and any person liable to pay money into the treasury, who shall pay the same otherwise than according to this act, shall remain liable for such money, and be subject to the same fine, penalty, forfeiture or damages to which he would have been subject if he had not paid the same.

Certificate to be taken by the person paying, from the depository.

And delivered to the Treasurer. Treasurer's duplicate receipts.

One of the Treasurer's receipts to be delivered to the Auditor.

No payment valid unless made according to this act.

Right of Governor to change depositories.

2. If the governor, at any time when the legislature is not in session, be of opinion that the safety of the public funds requires that no more money should be paid to the credit of the treasury into any one or more of the depositories specified in this act, he shall announce the fact by proclamation, to be published in some newspaper printed at the seat of government; and after such proclamation is published, it shall not be lawful to pay any sum of money on state account, into any depository or depositories to which such payment shall be thereby forbidden. And if the governor, at any time when the legislature is not in session, be of opinion that the safety of the public funds requires it, he shall by his order in writing, direct the auditor and treasurer to transfer the money held by any depository or depositories on account of the treasury, to any other safe and proper depository or depositories to be designated in such order; and the auditor and treasurer shall thereupon transfer the same as directed. But all such proclamations and orders shall, as soon as possible thereafter, be submitted to the legislature.

Or direct the public funds to be transferred.

Repealing clause.

3. The eighth, ninth, and tenth sections of the ordinance passed June twenty-first, eighteen hundred and sixty-one, entitled "An ordinance relating to the receipts and disbursements of the public revenue, and providing for the appointment of an auditor, treasurer and secretary of the commonwealth," and the act of the general assembly of Virginia, passed May thirteenth, eighteen hundred and sixty-two, to amend the eighth section of the said ordinance, are hereby repealed.

4. This act shall be in force from its passage.

CHAP. 12.—An ACT to regulate the recovery of Claims where the State is a party interested.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. The forty-second, forty-third and forty-sixth chapters of the Code of Virginia, second edition, shall be amended by striking out the words "circuit court of the city of Richmond," "commonwealth," and "Virginia," wherever they occur, and inserting in place thereof the words "circuit court for the county in which the seat of government may be located," "state," and "West Virginia," respectively. Chapters 42, 43 and 46 of Code of Virginia amended.

2. The forty-third chapter shall be further amended by striking out the words "in the county or corporation court, or," and the words "or corporation," wherever they occur in the second section thereof, and by inserting the word "assessor" in place of "commissioner of the revenue," twice in the fifth section; and the words "the clerk of the circuit court for his county," in place of "the clerk of his county or corporation court," in the sixth section; and the words "the circuit court for his county" in place of "the court of his county or corporation," in the ninth section; and the words "the prosecuting attorney" in place of "the attorney for the commonwealth," in the thirteenth section. Chapter 43 further amended. Chap. 43, Sec. 2. Chap. 43, Sec. 5. Chap. 43, Sec. 6. Chap. 43, Sec. 9. Chap. 43, Sec. 13.

3. The twenty-second section of the forty-third chapter shall be amended to read as follows: "22. If any sheriff or other officer shall pay any amount so charged him, and it shall afterwards appear, by the return on the execution therefor, that nothing was received thereon, the auditor shall thereupon issue a warrant on the treasury to refund the amount so paid." Chap, 43, Sec. 22.

4. The said forty-second, forty-third and forty-sixth chapters shall be and continue in force, amended as aforesaid, as laws of this state. Chap. 42, 43, and 46, as amended, to continue in force as laws of this State.

5. This act shall be force from its passage.

CHAP. 13.—An ACT to prevent the encouragement of Invasions and Insurrections.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. Every person who shall attempt to justify and uphold an armed invasion of this state, or an organized insurrection therein, by publicly speaking, writing or printing, or by publishing or circulating such writing or printing, during the continuance of such invasion or insurrection, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be confined in jail not exceeding twelve months and fined not exceeding one thousand dollars. Upholding an invasion or insurrection by publicly speaking, writing or printing, during its continuance, or by circulating, &c. To be punished as a misdemeanor.

2. This act shall be specially given in charge to the grand juries at every regular term of the circuit courts. This act to be given in charge to grand juries.

3. This act shall be in force from its passage.

CHAP. 14.—An ACT to provide for the appointment and qualification of Deputy Sheriffs, Recorders and Clerks.

Passed July 16, 1863.

Be it enacted by the Legislature of West Virginia:

Sheriffs, &c., may appoint deputies with written consent of Judge.

1. A sheriff, recorder, or clerk of any court may, with the consent in writing, of the circuit court for the county, or the judge thereof in vacation, appoint any person as his deputy; and such deputy, during his continuance in office, may discharge any of the official duties of his principal.

Powers of deputy.

Removal of deputy.

2. Such deputy may be removed from office by his principal, or by the circuit court of the county.

Deputy may act after the death of the principal.

3. If a sheriff, recorder, or the clerk of any court, die during his term of office, his deputies in office at the time of his death, may continue to discharge the duties of the office, in the name of the deceased, until the qualification of his successor; and any default or misfeasance in office of such deputy shall be deemed a breach of the condition of the official bond of the principal, notwithstanding his death; but the personal representative of the deceased principal shall have the same right to remove any deputy from office, and to appoint another, that the principal would have had if alive.

Breach of bond after death of principal.

Executor or Administrator of principal may remove deputy.

Certain appointment of deputies confirmed.

4. Any appointment of deputy sheriff, recorder, or clerk made since the nineteenth day of June, eighteen hundred and sixty-three, with the consent in writing of the judge of the circuit court for the county, shall have the same force and effect as if made in pursuance of this act.

5. This act shall be in force from its passage.

CHAP. 15.—An ACT to provide Seals for the several Courts and Recorders.

Passed July 17, 1863.

Be it enacted by the Legislature of West Virginia:

The Governor to provide seals for the Courts and Recorders.

1. For every court or recorder without one, the governor shall provide a seal, to be deposited with the clerk of the said court, or with the said recorder, respectively.

2. This act shall be in force from its passage.

CHAP. 16.—An ACT to authorize the Payment of Outstanding Claims for the Tuition of Indigent Children.

Passed July 20, 1863.

Be it enacted by the Legislature of West Virginia:

Claims for tuition prior to Sep. 30, 1862.

1. The superintendents of schools for the several counties of the state are hereby authorized and directed to pay, out of any money in any way accruing or belonging to the literary fund prior to the twentieth day of June, one thousand eight hundred and sixty-three, and

which has heretofore, or may hereafter, come into their hands, all outstanding claims for the tuition of indigent children, where such services were rendered previous to the thirtieth day of September, one thousand eight hundred and sixty-two, and where the accounts for such services have been properly made out and lawfully certified and orders given for the amount thereof, by the school commissioner who authorized the services to be performed, upon the superintendent of schools for the county where such services were rendered. But nothing in this act shall be so construed as to authorize the payment of any claim for such services rendered prior to the thirtieth day of September, in the year one thousand eight hundred and sixty, in any school district where the commissioner thereof had previously exhausted his quota for the current year.

Claims prior to Sep. 30, 1860, not included.

2. This act shall be in force from its passage.

CHAP. 17.—An ACT defining the Jurisdiction and Powers of the Supreme Court of Appeals and the Judges thereof.

Passed July 20, 1863.

Be it enacted by the Legislature of West Virginia:

1. In addition to the jurisdiction conferred on the supreme court of appeals by the constitution, the said court, and the judges thereof respectively, shall succeed to and have all the jurisdiction and powers, original and appellate, which, under the laws in force on the nineteenth day of June, eighteen hundred and sixty-three, could have been exercised by the supreme court of appeals or the district courts of Virginia, or the judges thereof respectively, respecting any suit or proceeding within the limits of this state.

Jurisdiction of Court of Appeals and the Judges thereof to be the same as that of former Court.

2. The supreme court of appeals of this state shall hear and determine all causes legally docketed therein or transferred thereto. And it shall be the duty of the clerk of the said court, if in his power to do so, to procure without delay the record of every cause which, on the nineteenth day of June, eighteen hundred and sixty-three, was pending in the supreme court of appeals of Virginia and the district courts thereof, if the supreme court of appeals of this state have jurisdiction of such cause; and to docket the same in his said court, before the commencement of the first term thereof which shall be held in the year eighteen hundred and sixty-four.

To hear all causes legally docketed.

The clerk to procure records. In what cases.

And docket the same before the first term in the year 1864.

3. The appellant in every such cause shall procure and deliver to the said clerk a proper record of the said cause before the close of the first term of the supreme court of appeals of thi s state, to be held in the year eighteen hundred and sixty-five, and cause the same to be docketed. And upon failure of the appellant to deliver the said record and have the same docketed as aforesaid, the cause shall stand dismissed at the close of the last mentioned term, and the original judgment or decree of the court below remain in full force. But the supreme court of appeals of this state, for good cause, may, at any time before a cause is dismissed as aforesaid, grant further time for

The appellant to furnish the record before the end of the first term in 1865.

Or cause to be dismissed.

The court may grant further time for producing the record.

producing the record and having the same docketed, but such extension shall not be granted more than once; and if the record be not delivered and the cause docketed within the time so allowed, the cause shall stand dismissed as aforesaid.

Costs of procuring record.

4. The reasonable costs of procuring and docketing the said record shall be taxed, under direction of the court, to such party in the cause as the court shall deem right.

Clerks of former courts to deliver records, &c., to clerk of Court of Appeals.

5. It shall be the duty of the several persons who have heretofore acted as clerks of the above mentioned courts which have ceased to exist within this state, to deliver to the clerk of the supreme court of appeals of this state the records, books, papers, seals and other property of the said courts.

Where the time for appeals, &c., expired between April 17, 1861, and the end of first term in 1864.

6. In all cases where the time limited for appeal from, or writ of error or supersedeas to, any judgment, decree or order of any circuit court, has expired since the seventeenth day of April, eighteen hundred and sixty-one, or shall hereafter expire before the close of the first term of the supreme court of appeals of this state to be held in the year eighteen hundred and sixty-four, any party who would otherwise have been entitled thereto, may, at any time before the close of the first term of the said court to be held in the year eighteen hundred and sixty-five, present his petition for such appeal, writ of error or supersedeas, notwithstanding anything to the contrary contained in the third section of chapter one hundred and eighty-two of the Code of Virginia, second edition, or in any other law or statute of the state of Virginia.

Further time may be granted on petition, before end of first term in 1865.

Court may appoint tipstaff. His compensation.

7. The supreme court of appeals of this state may appoint a tipstaff and crier, who shall receive out of the treasury such reasonable compensation as the court may allow, and be removable at pleasure. The court shall also appoint, and may remove at pleasure, a reporter, and make such order, from time to time, respecting the preparation, publication and distribution of his reports as may seem to them proper. The reporter shall receive such sum, not exceeding six hundred dollars annually, as the court may determine.

May appoint and remove a reporter, and direct how the reports shall be prepared

Compensation of reporter.

Repealing clause

8 Chapters one hundred and fifty-nine, one hundred and sixty, and one hundred and sixty-six, the sixth section of chapter fourteen, the third and fourth sections of chapter nineteen, of the said Code, and so much of the tenth section of the last mentioned chapter as relates to the reports of decisions, are hereby repealed.

9. This act shall be in force from its passage.

CHAP., 18.—An ACT for the relief of Milton Wells.

Passed July 21, 1863.

Be it enacted by the Legislature of West Virginia:

Clerk of Brooke Circuit Court allowed time to qualify and give bond.

1. Milton Wells, elected clerk of the circuit court for Brooke county, is hereby allowed one hundred and twenty days after his election, in which to qualify and give the bond of his office.

This act shall be in force from its passage.

CHAP. 19.—An ACT regulating proceedings in Criminal Cases.

Passed July 22, 1863.

Be it enacted by the Legislature of West Virginia:

Who may issue process to apprehend the accused.

1. A judge of a circuit court, in vacation, as well as in term time, or a justice, may issue process for the apprehension of a person charged with an offense.

The examination before such process is issued.

What the warrant shall contain.

2. On complaint to any such officer, of a criminal offense, he shall examine on oath, the complainant and any other witnesses, and if he see good reason to believe that an offense has been committed, shall issue his warrant reciting the accusation and requiring the person accused, to be arrested and brought before a justice of the county; and, in the same warrant, may require the officer to whom it is directed to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Proceedings where the accused is out of the county in which the offence was committed.

Endorsement by justice of warrant issued in another county.

3. If a person charged with an offense shall, after or at the time the warrant is issued for his apprehension, escape from or be out of the county in which the offense is alleged to have been committed, the officer to whom the warrant is directed, may pursue and apprehend him anywhere in the State; or a justice of a county other than that in which it was issued, on being satisfied of the genuineness thereof, shall endorse thereon his name and official character, and such endorsement shall operate as a direction of the warrant to an officer of such justice's county.

Before whom the person arrested is to be taken.

4. An officer arresting a person under a warrant for an offense, shall bring such person before, and return such warrant to, a justice of the county in which the warrant issued, unless such person be let to bail, as hereinafter mentioned, or it be otherwise provided.

Proceedings where the person taken before a justice is to be tried in another county.

5. Where the warrant is issued in a county other than that in which the charge ought to be tried, the justice before whom the accused is brought, shall by warrant, commit him to an officer, that he may, and such officer shall, carry him to the county in which the trial should be, and there shall take him before, and return such warrant to, a justice thereof.

In what cases a justice may bail the accused.

In what cases he may not.

Amount of bail where accused has been committed.

Power of Circuit Court, or Judge, to bail.

6. A justice may let to bail a person who is charged with, but not convicted of, an offense not punishable with death or confinement in the penitentiary, or of which, if it be so punishable, only a light suspicion of guilt falls on him. If the offense be so punishable, and there is good cause to believe such person guilty, he shall not be let to bail by a justice or justices; and in no case shall a person in jail under an order of commitment, be admitted to bail by a justice in a less sum than was required by such order. But a circuit court, or any judge thereof, may, for good cause, admit any person to bail before conviction.

Person arrested in one county, but to be tried in another.

Bail in cases of misdemeanor.

7. A person charged with an offense not so punishable, and to be carried to another county, shall, if he request it in the county wherein he is arrested, be brought before a justice thereof. In such or any case of a person charged with an offense not so punishable, if he de-

Recognizance in said case.

sire it, a court, judge or justice, before whom he is brought, may, without trial or examination, let him to bail upon taking a recognizance for his appearance before the court having cognizance of the case; the fact of taking which shall be certified by the court or officer taking it, upon the warrant under which such person was arrested; and the warrant and recognizance shall be returned forthwith to the clerk of the court before which the accused is to appear; to which court the judge or justice who issued such warrant shall recognize, or cause to be summoned, such witnesses as he may think proper.

To be certified on the warrant.

Warrant and recognizance, to whom returned.

Witnesses to be recognized or summoned.

Bail piece.

8. In all cases in which recognizances at the suit of the commonwealth of Virginia or of this State have heretofore been or shall be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance may be filed, to deliver to the bail on his applying therefor, a bail piece in substance as follows, viz: "*A B of the county of————is delivered to bail unto C D, of the county of————, at the suit of the state of West Virginia. Given under my hand this—day of——in the year——.*"

The justice may adjourn the examination.

In what case the accused to be committed, if the examination be adjourned.

Or recognized to appear.

9. A justice may adjourn an examination or trial pending before him, not exceeding ten days at one time, without the consent of the accused, and to any place in the county. In such case, if the accused be charged with an offense punishable with death or confinement in the penitentiary, he shall be committed to jail, otherwise he may be recognized for his appearance at the time appointed for such further examination or trial, or for want of bail be committed to jail.

Proceedings if the person bailed do not appear.

10. If the person so recognized do not appear at the time so appointed, the said justice shall certify the recognizance and the fact of such default to the circuit court at its next term; and like proceedings shall be had thereon as on breach of a recognizance for appearance before such court.

Order of commitment for further examination.

How accused brought before the justice.

11. If the accused is committed, it shall be by an order of the justice stating that he is committed for further examination on a day specified in the order; and on that day he may be brought before the justice by his verbal order to the officer by whom he was committed, or by a written order to a different person.

Witnesses to be examined in presence of the accused.

The accused allowed counsel.

12. The justice before whom any person is brought for an offense, shall, as soon as may be, in the presence of such person, examine on oath the witnesses for and against him, and he may be assisted by counsel.

Witnesses may be examined apart from each other.

13. While a witness is under such examination, all other witnesses may, by order of the justice, be excluded from the place of the examination and kept separate from each other.

Testimony may be reduced to writing.

14. When the justice deems it proper, or the accused shall desire it, the testimony of the witnesses shall be reduced to writing and signed by them respectively.

When the justice shall discharge the accused.

15. The justice shall discharge the accused if he consider that there is not sufficient cause for charging him with the offense; and he shall

commit him to jail, if he consider that there is such cause, or let him to bail, under the sixth section. He shall require recognizances, with or without sureties, as he deems proper, from all material witnesses against the accused, and also for him if he desire it.

Or commit or bail him.

Witnesses to be recognized.

16. When a justice so considers that there is sufficient cause for charging the accused with the offense, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial, and the recognizances be for appearance in the circuit court on some day of a term then being held, or on the first day of the next term thereof. The justice shall return to the clerk of such court, as soon as may be, a certificate of the nature of the offense, showing whether the accused was committed or bailed therefor; and the clerk, as soon as may be, shall inform the prosecuting attorney, in said court, of such certificate.

When the commitment shall be for trial.

The recognizances in such case.

What the justice shall certify to the court.

Clerk to inform the prosecuting attorney of such certificate.

17. Every examination and recognizance taken under this act shall, by the judge or justice taking it, be certified to the clerk of the circuit court, on or before the day on which the party charged is to appear in such court. If he fail, he may be compelled to do so by attachment, as for a contempt.

Examination and recognizances, when to be certified.

18. A justice to whom complaint is made, or before whom a prisoner is brought, may associate with himself one or more justices of the county, and they may together execute the powers and duties before mentioned.

A justice, before whom the accused is brought, may associate other justices with him.

19. When a person charged with a felony, is committed or recognized for trial in a circuit court according to the foregoing sections, the clerk of such court, shall as soon as may be, issue a *venire facias* directed to the officer of the court in which the trial is to be, requiring him to summon jurors for such trial.

VENIRE FACIAS in case of felony.

20. If a person be in jail, or under recognizance to answer a charge of assault and battery or other misdemeanor, for which there is a remedy by civil action, unless the offense was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured appear before the judge or justice who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, such judge or justice, in his discretion, may by an order under his hand, supersede the commitment or discharge the recognizances as to the accused and the witnesses, upon payment by the accused of the costs which may have already accrued.

Compromise of assault and battery, and misdemeanor.

21. Every order discharging a recognizance shall be filed with the clerk before the day of the court on which the party was to appear; and an order superseding a commitment shall be delivered to the jailor, who shall forthwith discharge the witnesses (if any) and the accused; and against him judgment shall be entered in the said court, for the costs of the prosecution which have not already been paid.

Order discharging recognizance

Order superseding a commitment.

Discharge in such case of the accused and the witnesses.

22. Any person committed or recognized for examination before an examining court, as provided for in chapter two hundred and five of the Code of Virginia, or committed or recognized for trial before a

Trial of persons heretofore committed, &c.

court of oyer and terminer, as provided for in section second of chapter two hundred and twelve of the said Code, shall appear for trial before the circuit court of the county in which such examining court, or court of oyer and terminer, was to be held, on the first day of the next term thereof, in the same manner as if committed or recognized for that purpose under the foregoing sections. And all witnesses recognized to appear before such examining court, or court of oyer and terminer, shall appear before such circuit court on the first day of the next term thereof.

Chap. 204 and 205 of Code repealed.

23. Chapters two hundred and four and two hundred and five of the Code of Virginia are hereby repealed.

24. This act shall be in force from its passage.

CHAP. 20.—An ACT allowing further time to Officers now elected, in which to Qualify and give Bond.

Passed July 22, 1863.

Be it enacted by the Legislature of West Virginia:

Time allowed officers heretofore elected to qualify and give bond.

1. Any person who is now elected to any office in any county in this State, who is required by law to qualify and give bond, shall be allowed until the end of the first term of the circuit court for the county in which he is elected, in which to qualify and give the bond of his office, if it be made appear to said court, or the judge thereof in vacation, that such officer has been prevented, by any cause, from qualifying and giving said bond within the time fixed by an act entitled "An act relating to official bonds," passed June twenty-ninth, eighteen hundred and sixty-three.

2. This act shall be in force from its passage.

CHAP. 21.—An ACT for the appointment of a Quartermaster General, and prescribing, in part, his duties.

Passed July 23, 1863.

Be it enacted by the Legislature of West Virginia:

Quartermaster General to be appointed by the Governor. His rank.

Term of office.

1. There shall be a quartermaster general, who shall be appointed by the governor, with the rank of a colonel of infantry, by brevet. His term of office shall be two years unless the office be sooner abolished; but the term of the first quartermaster general appointed shall expire on the first of January, eighteen hundred and sixty-five.

His duties and powers.

2. He shall have charge of the quartermaster's department throughout the State, and issue orders to all quartermasters, requiring returns and reports, and give instructions for the preservation of the public property. He shall be commissary general of ordnance, and as such shall direct the inspection and proving of all ordnance and ammunition, and the preparation thereof for service.

3. All public arms, ammunition, accoutrements, camp equipage, and military stores, belonging to the State, shall be subject to the control of the quartermaster general, in accordance with the order of the governor; and it shall be the duty of said quartermaster general to see that all arms and munitions of war now belonging to the State, or which may hereafter in any manner be acquired, are properly cared for and kept in good order for use. All accounts accruing against the State under the provisions of this act shall be paid on the certificate of the quartermaster general, countersigned by the governor.

His duties and powers continued.

Accounts under this act, how certified.

4. All the duties attached to this office shall be performed under the regulations of the executive, and the laws of West Virginia; and said quartermaster general shall receive for his services the sum of one thousand dollars per annum, payable quarterly as other salaries are paid. He shall keep his office at the seat of government; but the governor may, when the public service may render it expedient, direct him to remove with his office to any other place within the state.

Authority of the Governor.

Compensation of Quartermaster General.

Where his office shall be kept.

5. He shall report to the governor once a year, and at all other times when required.

His reports to the Governor.

6. Before entering upon the duties of his office, said officer shall execute a bond to be approved by the governor, in the penalty of ten thousand dollars, with sufficient sureties; and said bond shall be filed in the office of the secretary of the state.

His bond.

7. The provisions of section twenty-sixth, chapter twenty-third, of the code of Virginia, second edition, inconsistent with this act, are hereby repealed.

Repealing clause.

8. This act shall be in force from its passage.

CHAP. 22.—An ACT to amend the act Staying the Collection of Certain Debts.

Passed July 27, 1863.

Be it enacted by the Legislature of West Virginia:

1. If it shall appear to the judge of any circuit by satisfactory proof, either in term time or vacation, that any person who has executed a deed of trust on estate, real or personal, or against whom a decree has been or may be rendered for the sale of real estate within the said circuit, is engaged in levying war against the United States, or in giving aid and support to the rebellion, it shall be lawful for the said judge, at the request of any party interested, to issue an order under his hand, directed to the trustee or commissioner, requiring him to advertise and sell the said estate pursuant to the deed of trust or decree.

A Judge may order a deed of trust or decree to be executed against any person in rebellion.

2. Where any decree has been heretofore or may be hereafter rendered, for the sale of real estate belonging to infants, the judge for the circuit in which said real estate may lie, either in term time or vacation, may, if he deem it for the interest of the infants, and their guardian, (if there be any) consent thereto, direct such sale to be made pursuant to said decree.

Sale of real estate of infants.

Sale of property which has greatly diminished in value.

3. Where a lien exists by virtue of any decree heretofore rendered or that may hereafter be rendered, or by virtue of a deed of trust executed before the twenty-sixth day of July, eighteen hundred and sixty-one, on property either real or personal, or where such property in the hands of a receiver, is from any cause greatly diminishing in value, upon satisfactory proof thereof, before a judge, either in term time or vacation, of the circuit in which such property may lie, he shall direct the sale thereof pursuant to said decree or deed of trust; and in case of property in the hands of a receiver, issue an order directing such sale, upon such terms as to him shall seem just, to be made either by such receiver or a special commissioner appointed for that purpose.

Duty of trustee &c., to comply with order.

4. It shall be the duty of such trustee, commissioner or receiver to comply with any such order made as aforesaid, notwithstanding any thing to the contrary contained in the act of the general assembly of Virginia, passed January thirtieth, eighteen hundred and sixty-three, entitled "an act staying the collection of certain debts." And when any such trustee, commissioner, or receiver is so situated, from any cause, that he cannot comply with such order, it shall be the duty of such judge to appoint one in his place for the purpose, whose duty it shall be to execute such order.

Authority of the Judge to change the trustee.

Orders under this act to be recorded.

5. It shall be the duty of the judge who may make any order in vacation, under the provisions of this act, to cause such order to be forthwith entered on the order book of the circuit court of the proper county: and if the order relate to any decree, to cause a copy of such order to be filed among the papers of the cause.

6. This act shall be in force from its passage.

CHAP. 23.—An ACT relating to Exemptions from Military Duty.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

Who are exempt from military duty.

1. The following persons shall be exempt from the performance of all military duties whatever, to wit: The vice president of the United States, the officers, judicial and executive of the government of the United States, the members of both houses of Congress and their respective officers, the members of both branches of the legislature of the state and their respective officers, during the sessions of the legislature, and for ten days previous thereto, all custom house officers, all assessors, assistant assessors and collectors of the internal revenue of the United States, all post masters and post officers necessarily employed in any post office, all mail contractors, all inspectors of exports, the secretary of the state, the judges of the supreme court of appeals and circuit courts, the clerks of the said courts, recorders, sheriffs and sergeants of corporations, the attorney general, the treasurer, auditor, all loyal ministers of the gospel licensed to preach according to the rules of their sect, and having charge of, or being reg-

ularly employed by, any charge, congregation, or circuit. Also, first, the only son of a widow dependent on his labor for support; second, the only son of aged or infirm parent or parents dependent on his labor for support; third, where there are two or more sons of aged or infirm parents subject to draft, the father, or if he be dead, the mother, may elect which son shall be exempt; fourth, the only brother of children not twelve years old, dependent upon his labor for support, if such children have neither father nor mother living; fifth, the father of a motherless child or children dependent upon his labor for support; sixth, where there are a father and sons in the same family and household, and two or more of them are in the military service of the United States or of this state, the residue of such family and household shall be exempt. The enrolling board shall in all cases decide the number of persons necessarily engaged in any post office.

Who exempt from ordinary military duty.

2. The following persons shall be exempt from the performance of the ordinary duties of militiamen, but shall be liable to be drafted, and on the order of the governor, to be detailed for drill and active service in time of public danger or invasion, to-wit: all millers necessarily and personally employed in any grist mill, all ferrymen in like manner employed at any ferry established by law, the general agent and store-keeper of the penitentiary and his clerks, the officers and members of all fire companies who are exempt by the provisions of the fourth section of chapter fifty-five of the Code of Virginia, second edition, the police in cities and towns, all school commissioners, trustees of district free schools, and, during the sitting of the supreme court of appeals, the tipstaff and crier thereof, also every officer of the militia who may resign his commission after serving seven years successively, and every non-commissioned officer or member of a uniformed and armed volunteer company, who shall have served in one or more such companies for three successive years.

Chap. 22, Sec. 2 and 3 of Code repealed.

3. The second and third sections of chapter twenty-second of the Code of Virginia, second edition, are hereby repealed.

4. This act shall be in force from its passage.

CHAP. 24.—An ACT to provide for the trial of Offenses committed in counties in which the administration of justice may be interrupted by war or insurrection.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

In what case an offense may be tried out of the county where it was committed.

1. When any county, or part of it, is in possession of armed rebels or a public enemy, or is threatened with invasion, or war or insurrection exists therein, so as to make it probable that the jurisdiction of the circuit court could not safely and without interruption be exercised therein, offenses committed in such county against the criminal laws of the state may be prosecuted, tried and punished in another county, as hereinafter provided, and no question of jurisdiction as to the place of trial shall be sustained by the court. But the venue may be changed as in other cases.

The venue may be changed.

Circuit Judge may appoint the place of trial.

Examination of accused out of the county.

His committal or discharge.

Witnesses recognized or summoned.

Recognixances—how returned.

Persons held for trial may be tried and punished in the county so appointed.

2. It shall be the duty of the judge of the circuit to which such county belongs, by warrant to be directed to and executed by any sheriff in the state, to cause persons charged with felonies or misdemeanors committed in the said county, to be arrested and brought before him at such convenient place in any other county as he may appoint for the purpose; and there, as the evidence may require, to commit or recognize them for trial in the circuit court of the last mentioned county, or discharge them; and if he so commit or recognize any person for trial, to recognize or cause to be summoned such witnesses as he may think proper. The said warrant and recognizances shall be returned forthwith to the clerk of the court before which the accused is to appear. The persons so committed or recognized for trial, may be indicted, tried, convicted and punished as if the offenses had been committed in the county appointed for their trial as aforesaid.

The accused, if previously committed, may be taken to another county for trial. In what case.

Removal of the indictment and papers in the case

New indictment may be found if the papers in the case be destroyed

3. And if a person charged with a felony or misdemeanor has been committed to the jail of any county in which, for the causes mentioned in the first section of this act, it is probable that the jurisdiction of the circuit court could not be safely and without interruption exercised, it shall be the duty of the judge for the circuit to which such county belongs, by warrant to be directed and executed as aforesaid, to cause the person so committed, with the papers in his case, including the indictment, if any shall have been found against him, to be removed to any other county in this state the said judge may for that purpose appoint; and the same proceedings may be had thereupon in the circuit court of the last mentioned county as if the offense had been committed and the indictment had been found therein. If the papers in the case have been destroyed, carried away or concealed so that the same cannot be produced in the circuit court appointed for trial as aforesaid, a new presentment or indictment may be preferred the against the accused.

Expenses to be paid by the State.

4. All expense of such trial, and of the apprehending and safe keeping of the criminal, shall be certified to the auditor of the state and paid by the treasurer thereof.

In what case the Judge of an adjoining circuit may act.

5. And where a felony or misdemeanor has been committed in any county in which, for the causes aforesaid, it is probable that the jurisdiction of the circuit court could not be safely and without interruption exercised, and there is no judge for the circuit to which such county belongs, or he shall refuse or be unable to act, the authority specified in the preceding sections of this act may be exercised by the judge for any adjoining circuit, with like effect to all intents and purposes.

6. This act shall be in force from its passage.

CHAP. 25.—An ACT making an Appropriation for Expenses of the Legislature.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

1. Ten thousand dollars are hereby appropriated for expenses of the legislature at its present session. $10,000 appropriated for expenses of Legislature.

2. This act shall take effect from its passage.

CHAP. 26.—An ACT providing for Examining and Certifying Commissioners' Books for 1863.

Passed July 28, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be the duty of the recorders of the several counties of this state, where the books of the commissioners of the revenue were not examined and certified before the twentieth day of June, eighteen hundred and sixty-three, to examine and certify said books for eighteen hundred and sixty-three, and do and discharge all the duties in reference thereto, as is required of the clerks of the county courts; and the said recorders shall be subject to the like penalties and receive the same allowances as is prescribed in chapter thirty-five of the second edition of the Code of Virginia for the said clerks. When Commissioners' books to be certified by the recorder. Recorder's duty, liability and fees same as those of clerk of county court.

2. This act shall be in force from its passage.

CHAP. 27.—An ACT to provide for the division into Townships of the several Counties of the State.

Passed July 31, 1863.

Be it enacted by the Legislature of West Virginia:

1. The persons named in the schedule of this act, being one for each magisterial district in each county of the state, a majority of whom may act, are hereby appointed commissioners to divide their respective counties into townships, in accordance with the provisions of the first section of the seventh article of the constitution; and shall as soon as practicable, first being duly sworn, proceed to make such division. Where a city or incorporated town necessarily constitutes part of two or more townships, and is divided into wards, the boundaries of such townships within such city or town, shall if practicable be so located that parts of the same ward are not thrown into different townships. Commissioners named to divide the counties into townships. Division of cities and towns into townships.

2. In case of the refusal or inability to act of one or more of the commissioners hereby appointed, the remaining commissioner or commissioners for the same county shall appoint another citizen or citizens thereof to fill the vacancy or vacancies, whose duties and compensation shall be the same as if directly appointed by this act. Refusal or inability to act of one or more of the commissioners.

3. The commissioners for each county shall employ a competent surveyor, who shall attend them when required, and shall run and Surveyor to be employed.

Duties of surveyor. mark such lines as they may designate. He shall make and return to
Outline maps to be made. the said commissioners two fair outline maps or plats of his county,
What the maps to contain. on which the external boundaries thereof and the division lines of the townships therein, shall be plainly delineated and each township des-
Names of the townships. ignated by a name to be chosen by a majority of the acting commissioners, together with two written descriptions of the specific boundaries of each.

Pay of the commissioners. Pay of the surveyor. 4. For their services under this act, the acting commissioners shall be allowed the sum of one dollar and a half each, and the surveyor two dollars, for every day during which they are respectively engaged in the performance of the duties hereby prescribed, including the time necessarily employed by the surveyor in making the required maps or
How audited and paid. plats and descriptions. The claims of the commissioners and surveyor shall be audited by the board of supervisors of their county and paid from the county treasury.

Report of the commissioners to the Secretary of the State. 5. The commissioners for each county shall forward a report of their proceedings under this act, including an estimate of the white population of each township according to the United States census of eighteen hundred and sixty, and a statement of the whole cost incurred, together with one of the said maps or plats and descriptions,
Duty of the Secretary of the State. to the secretary of the state, who shall deposit the same among the
Report by commissioners to the recorder of the county. archives thereof. They shall also deposit with the recorder of their county, to be by him carefully preserved, a duplicate of their estimate and statement, and also the other map or plat and description.

6. This act shall be in force from its passage.

SCHEDULE.

COMMISSIONERS FOR THE COUNTY OF

Barbour—David Zinn, Henry Martin, Johnson Ward, Jesse Teter, and Enoch Sears.

Boone—Adam Toney, William Workman, Alfred A. Hagar, and Allen Vannatter.

Braxton—Charles S. Hall, James W. Morrison, James J. McCoy, Jacob Shaver, and Elmore Frame.

Brooke—Adam Kuhn, John Atkinson, George Hooker, and Robert M. Wells.

Cabell—Morris Blake, Capt. John Smith, Greenville Harrison, Jeremiah Witcher, and Solomon Midkiff.

Calhoun—James Bar, Thomas Jarvis,, Morgan Marks, and G. W. Blackshire.

Clay—Samuel E. Hier, Madison Stephenson, Campbell Wood, and James Walker, Sr.

Doddridge—Jacob Yeater, George W. Snider, Joseph Summers, and Noah James.

Fayette—William Cassady, John Kinkaid, Joseph Kuhn, and Allen Huddleson.

Gilmer—James Cather, J. W. Stout, and Thomas M. Brannan.

Greenbrier—John M. Copland, Joel McFerson, David Creigh, Thomas Henning, Jr., George Henry, Thomas Bell, Matthew Arbuckle, and James Dolan.

Hancock—James W. Brown, Joseph W. Allison, B. J. Smith, and Jonathan Allison.

Hampshire—O. D. Downey, Wright Welton, Carlton S. Jones, James H. Trout, Thomas R. Carskadon, Wm. S. Purget, Frederick Hoffman, Samuel Pancoast, and Peter Arnold (of Joseph.)

Hardy—Samuel Babb, Aaron Baker, Chas. Scott, Sanford Y. Simmons, A. Dolly, and Ferdinand Lewis.

Harrison—Luther Haymond, S. M. Ogden, Sidney Haymond, John W. Boggess, and Jacob Highland.

Jackson—George L. Kennedy, John Johnson, Robert R. Riley, Abram Slaughter, and George Click.

Kanawha—George Belcher, J. T. Reynolds, John Atkinson, Hiram Holston, Andrew Cunningham, David Shirkey, and John L. Cole.

Lewis—Jesse Woofter, Esais Fetty, John S. Anderson, and Mansfield McWhorter.

Logan—Thomas Buchanan, Samuel Varner, Hiram Mullins, Tolbert Godbey, and Squire Ellis.

Marion—Wm. N. Hall, Samuel Higinbotham, John Meredith, Benjamin Fleming, Aaron Youst, Wm. Fox, and David Cunningham.

Marshall—John Winters, Jeremiah Jones, Wm. McFarland, Sr., Alex. Kemple, G. W. Evans, Wm. Stewart, Jonn Burley, and John Alley.

Mason—J. P. B. R. Smith, Thos. Ball, Benj. Day, Apollo Stephens, and David George.

McDowell—James P. Mitchell, Samuel Lambert, and Jno. Charles.

Mercer—George Evans, Wallace J. Comer, Hiram Sarver, Anderson Belcher, and Geo. W. Crook.

Monongalia—William Price, Reuben Finnell, James T. McClaskey, Thomas Tarleton, Philemon L. Rice, Jesse Mercer, and Jesse J. Fitch.

Monroe—Grandison D. Landcraft, F. F. Neel, Alexander Humphreys, Wm. Scott, Samuel Clark, Geo. Carpenter, and Andrew Prentice.

Morgan—Jacob Cann, Thomas Tritapoo, Christian Courtney, and Daniel Unger.

Nicholas—John R. McCutchen, Geo. A. Stephenson, Thomas Drennen, Anthony McClung, and Alex. Groves.

Ohio—Samuel Irwin, Matthew B. Reed, Joseph Waddle, Samuel McCulloch, T. J. Stewart, John D. Maxwell, George W. Sights, and James Bodley.

Pendleton—E. C. Harper, Michael Mallow, Jr., S. Day, Simeon Harmon, Jonathan Hizer, and Reuben Vance.

Pleasants—James Williamson, R. S. Triplet, and Joseph Hubbs.

Pocahontas—D. M. Burgis, William R. Moore, J. N. Pray, Morgan Anderson, David M. Burgis, John Sharp, Sr., and John N. Pray.

Preston—Harrison Hagans, Solomon Miller, George M. Michael, James H. Shaver, Peter M. Hartley, William H. Grimes, Joseph G. Baker, and William H. Brown.

Putnam—Irwin McCoy, John Bowyer, Joseph Hutton, A. N. Curry, and William Hanshaw.

Raleigh—Meredith Wells, James Webb, and A. J. Hull.

Randolph—J. K. Scott, William Bennett, W. M. Phares, Harmon Snider, Jeremiah C. Lanham, and William Piercy.

Ritchie—W. H. Douglass, A. J. Wilson, J. H. Prince, and Jacob Hatfield.

Roane—John Hively, H. D. Chapman, Matthew Geary, and Jas. Riddle.

Taylor—Nelson Gray, John J. Allen, and John Haymond.

Tucker—David Wheeler, Enoch Minear, and Daniel Adams.

Tyler—J. M. Smith, James Covalt, William B. Kern, and David Underwood.

Upshur—James Kesling, C. S. Haynes, O. B. Loudin, and John J. Burr.

Wayne—John Adams, Wm. Bartrum, Jesse Parsley, John Bloss, and George Atkins.

Wetzel—James G. West, Jacob Fluharty, Robert Leep, Sr., Wells Kinney, Matthew Kearney, and Josiah Boyers.

Webster—W. G. Hamrick, William Gregory, and I. H. Griffin.

Wirt—Lewis Woodyard, Charles W. Fisher, Ahijah Hawley, and John P. Hall.

Wood—H. P. Dils, A. L. Beckwith, G. S. Henry, John Hannaman, Sr., Henderson Deems.

Wyoming—Mitchell Cook, Henry Ellis, and Charles Stewart.

CHAP. 28.—An ACT concerning the Bond of the Surveyor of Lands.

Passed July 31, 1863.

Be it enacted by the Legislature of West Virginia:

The bond of the surveyor of lands. By whom approved. Penalty. Time allowed for giving bond.

1. Every surveyor of lands shall give bond, to be approved by the circuit court of the county, or the judge thereof in vacation, in such penalty, not less than one thousand nor more than three thousand dollars, as the said court or judge shall deem sufficient. But all surveyors now elected shall be allowed one hundred and twenty days after the passage of this act in which to execute such bond.

2. This act shall be in force from its passage.

CHAP. 29.—An ACT in relation to Orders of Publication.

Passed August 1, 1863.

Be it enacted by the Legislature of West Virginia:

Chapter 170, Sec. 11, of the Code amended. Order of publication, what it shall state. How published.

1. Section eleven of chapter one hundred and seventy of the Code of Virginia shall be amended and re-enacted to read as follows:—"11. Every order of publication shall state briefly the object of the suit, and require the defendants against whom it is entered, or the unknown parties, to appear within one month after due publication thereof and do what is necessary to protect their interests. It shall be published once a week for four successive weeks in such newspa-

per as the court may prescribe, or if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the court-house of the county wherein the court is held, on the first Monday after it is entered." Where and when posted.

2. This act shall be in force from its passage.

CHAP. 30.—An ACT to authorize the Heirs of David Albright to establish a Ferry across Cheat River.

Passed August 3, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the heirs of David Albright, deceased, their heirs and assigns, to establish and keep a ferry from their lands at or near the town of Albright, in Preston county, across Cheat river to some convenient point on the opposite shore, where a former ferry, known as "Snider's ferry," crossed said river, and immediately below the site of the recent wire suspension bridge, known as the "Cheat River Toll Bridge," until the first meeting of the board of supervisors of the said county. And said board of supervisors shall at their first meeting, or as soon thereafter as may be practicable, (if any other person or persons shall have title to said ferry landings, or either of them,) award such damages as they may deem just to such adverse claimants, for the use and occupancy of said real estate for the period said Albright's heirs may have used the same for said ferry. Heirs of David Albright allowed to establish a ferry across Cheat river. Power of supervisors to award damages.

2. The rates for transportation across said river at said ferry shall be as follows, to-wit: Rates of toll at said ferry.

For every person on foot, five cents.
For every horse and rider, ten cents.
For every wagon and one horse and driver, twenty cents.
For every wagon and two horses and driver, twenty-five cents.
And for each additional horse attached thereto, five cents.
For every buggy-wagon and one horse, twenty cents.
For every buggy or pleasure carriage and two horses, twenty-five cents.
For every score of sheep or hogs, ten cents.
For every head of cattle, one and a half cents.

3. This act shall be in force from its passage.

CHAP. 31.—An ACT relating to the Public Printing.

Passed August 4, 1863.

Be it enacted by the Legislature of West Virginia:

1. All the officers of the state at the seat of government, authorized to have printing done or blanks furnished at the expense of the state, are hereby required to have the same done or furnished by the public printer, unless the same shall have been previously authorized by the governor to be done elsewhere. State officers required to have printing done by public printer, unless the Governor direct otherwise.

Otherwise such printing not to paid for by the State.

2. No money shall be paid out of the public treasury for printing done elsewhere than by the public printer, unless the same shall have been previously authorized by the governor as aforesaid.

Authority of the Governor in respect to public printing.

3. For good cause, the governor may authorize the public printing to be done elsewhere than by the public printer, the reasons for which shall be given to the Legislature at its next session.

Authority of the clerk of House of Delegates.

4. Nothing herein contained shall be construed to affect the provisions contained in the sixteenth section of chapter fifteen of the Code of Virginia, second edition.

Chapter 20, Sec. 1, 2, and 4, of the Code repealed.

5. The first, second and fourth sections of chapter twenty of the Code of Virginia, second edition, are hereby repealed.

6. This act shall be in force from its passage.

CHAP. 32.—An ACT conferring on the Governor, Auditor, Treasurer and Secretary of the State, the powers and duties of the Board of Public Works.

Passed August 5, 1863.

Be it enacted by the Legislature of West Virginia:

Functions of the Board of Public Works vested in the Executive, &c

1. The same powers and duties which by the laws of the state of Virginia in force on the nineteenth day of June last were vested in and required of the governor, auditor, and treasurer of that state as a board of public works, are hereby vested in and shall be exercised by the governor, auditor, treasurer, and secretary of this state.

2. This act shall be in force from its passage.

CHAP. 33.—An ACT making Appropriations.

Passed August 5, 1863.

Be it enacted by the Legislature of West Virginia:

Appropriation made.

1. There is hereby appropriated for the purposes herein specified, the following sums, viz:

For expenses incurred by Executive Committee of Constitutional Convention.

To the payment of outstanding claims for expenses in carrying into effect the ordinances of the late constitutional convention and the schedule annexed to the original constitution, including expenses of all elections held under and by virtue of the said ordinances and schedule, two thousand and twenty-eight dollars and forty-eight cents.

Civil contingent fund.

On account of the civil contingent fund, five thousand dollars.

Salaries of civil officers.

To salaries of officers of civil government, four thousand dollars.

Expenses of judiciary.

To expenses of the judiciary, including salaries of judges, mileage, &c., five thousand dollars.

Contingent expenses of courts

To contingent expenses of the courts of the state, two thousand dollars.

Executive clerks.

To pay of clerks in executive offices, two thousand dollars.

Lunatics.

To expenses of lunatics, three thousand dollars.

Convicts.

To expenses of convicts, two thousand dollars.

To salary of adjutant general, six hundred dollars. Adjutant Gen'l.

To pay of janitor in executive office, one hundred and fifty dollars. Janitor in capitol

To defray expenses of criminal charges, including witnesses', jurors' and jailors' fees, three thousand dollars. Expenses for criminal charges

To pay Thomas Hornbrook, James Bodley, and J. Hornbrook, committee for expenses incurred in inaugural celebration, three hundred and one dollars and sixty-four cents. Expenses of inauguration.

To pay expenses of elections in the county of Harrison, seventy-three dollars. Election expenses in Harrison county.

To pay of commissioners of the revenue, three thousand dollars. Commissioners of the revenue.

2. This act shall be in force from its passage.

CHAP. 34.—An ACT to authorize Suits in Ritchie county in Cases heretofore cognizable in the Courts of Calhoun county.

Passed August 5, 1863.

Be it enacted by the Legislature of West Virginia:

1. Any action at law or suit in equity, which might, according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, be brought in Calhoun county, may be brought either in that county or in Ritchie county. Suits heretofore cognizable in Calhoun county may be brought in Ritchie.

2. This act shall be in force from its passage.

CHAP. 35.—An ACT admitting the county of Berkeley into, and making the same part of, this State.

Passed August 5, 1863.

WHEREAS, by an act of the general assembly of the state of Virginia, entitled "An act giving the consent of the state of Virginia to the county of Berkeley being admitted into and becoming part of the state of West Virginia," passed January thirty-first, eighteen hundred and sixty-three, it was, among other things, enacted that polls should be opened and held on the fourth Thursday of May, then next, at the several places for holding elections in the said county for the purpose of taking the sense of the qualified voters thereof on the question of including the said county in the state of West Virginia; and if the governor of the said state of Virginia was of opinion that the said vote had been opened and held, and the result ascertained and certified pursuant to law, he should certify the result of the same under the seal of the said state of Virginia to the governor of this state; and if a majority of the votes given at the said polls should be in favor of the said county becoming part of this state, the same should become part of this state when admitted, with the consent of the legislature thereof: And whereas, Francis H. Peirpoint, governor of the commonwealth of Virginia, did, on the twenty-second day of July, in the present year, after reciting that polls were opened in the said county on Thursday, the twenty-eighth Preamble. Act of the General Assembly of Virginia. Compliance with said act certified by the Governor of Virginia.

day of May, eighteen hundred and sixty-three, for the purpose indicated in the above entitled act, certify under his hand and the less seal of the said commonwealth, that from the returns on file in the executive department thereof, a very large majority of the votes cast at the said election were in favor of the said county of Berkeley becoming part of the state of West Virginia: Therefore,

Be it enacted by the Legislature of West Virginia:

Berkeley county admitted.

1. The county of Berkeley, lately constituting part of the commonwealth of Virginia, is hereby admitted into and made part of this state,

Made part of the tenth district, and tenth judicial circuit. To choose two delegates.

and shall constitute part of the tenth senatorial district, and of the tenth judicial circuit, and shall at the election herein provided for, and at every annual state election thereafter, choose two members of the house of delegates.

Governor to issue proclamation for election.

2. It shall be the duty of the governor, so soon as he shall have reason to believe that an election can be properly held in the said county, to issue his proclamation directing an election to be held on such day as he shall appoint, at the several places for holding elections therein, for the election of two delegates, an assessor, a clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands, and recorder, and appointing three voters of the said county, any two of whom may act, and any one or more of whom may fill vacancies in their own body, who shall serve as superintendents of the said election.

Officers to be elected.

Governor to appoint superintendents of election.

Superintendents to appoint commissioners and conductor.

3. The said superintendents shall, for every place of voting in the said county, appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the election at the place for which they are appointed. They shall furnish the commissioners for each place of voting with the proper ballot-boxes, poll books and forms. But if at the time the polls should be opened at any place of voting, there shall be present but one commissioner willing to act, he shall associate with himself, as a commissioner, some freeholder of the county then present; and if there be no commissioner present willing to act, any two freeholders of the county present, and willing to act, shall be commissioners.

To furnish same with poll books, ballot boxes and forms.

Powers of commissioners.

How the election is to be conducted

4. In all other respects the said election shall be conducted, and the result ascertained and returned according to the directions contained in clauses V, VI, VII, VIII, IX, X, XI, XII, XIII, XVII, XIX XX, and XXI, of an ordinance of the constitutional convention, entitled "An ordinance to provide for the organization of the state of West Virginia," passed February nineteenth, eighteen hundred and sixty-three. The secretary of the state shall prepare and forward in time, to the superintendents to be appointed as aforesaid, poll books and the proper forms of oaths and returns, and three printed copies of the constitution, as amended, for every place of voting in said county; and the said superintendents shall make proper distribution of the same.

Secretary of the State to supply superintendents with blanks and constitutions.

Superintendents to distribute the same.

Terms of office. When to commence.

5. The terms of office of the persons elected at the election herein directed to be held, shall commence as soon thereafter as they are

qualified, as required by law; but shall continue and be computed as if the same had begun on the first day of January last.

Old officers to hold on till successors qualified.

6. All officers acting within the said county by the authority of the laws of Virginia, and under the re-organized government thereof, at the time of the passage of this act, shall continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the state of West Virginia, until the officers elected or appointed under this or any other act of this legislature for the discharge of similar duties, are qualified.

Time of holding terms of Circuit Court in tenth circuit changed.

7. Clause X of the third section of an act entitled "an act to fix the terms of the several courts," passed at the present session of the legislature, is hereby repealed; and in place thereof it is hereby directed that the commencement of the terms of the circuit courts held in the several counties of the tenth circuit, shall be as follows: For the county of Pendleton, on the first day of March, and the same day of May, September and November; For the county of Hardy, on the tenth day of March, and the same day of May, September and November; For the county of Hampshire, on the twenty-third day of March, and the same day of May, September and November; For the county of Morgan, on the tenth day of April, and on the same day of June, October and December; For the county of Berkeley, on the sixteenth day of April, and on the same day of June, October and December.

When same to be held.

In Berkeley county.

Governor to appoint township commissioners.

8. The governor shall also appoint one person for each magisterial district of the said county of Berkeley, commissioners to divide the same into townships, under the provisions of an act passed at the present session of the legislature, entitled "an act to provide for the division into townships of the several counties of the state."

9. This act shall be in force from its passage.

Chap. 36.—An ACT defining the powers and duties of Recorders in relation to Wills and Fiduciaries.

Passed September 3, 1863.

Be it enacted by the Legislature of West Virginia:

Recorders' powers same as those heretofore exercised by the County Courts.

1. The recorders of every county shall have the same power to hear proof of, and admit wills and authenticated copies thereof to probate; to appoint, take bonds from, and qualify or remove personal representatives, guardians, committees and curators; to require and take new bonds from them; to appoint commissioners to examine the bonds and accounts of fiduciaries and settle with them; to examine reports of such commissioners, confirm them in whole or in a qualified manner or recommit them, or order them to be recorded; and to order the distribution of what appears due on such accounts, that the county courts of the respective counties had on the nineteenth day of June, in the year eighteen hundred and sixty-three, with the qualification hereinafter provided.

But not allowed to empannel juries.

2. Recorders shall not be allowed to empannel juries to settle questions of fact in dispute before them.

To transmit wills to Circuit Court for probate, in contested cases.

3. When any will is presented to any recorder for probate, and a controversy is likely to arise in relation to its probate, the recorder shall, at the request of any person interested, without deciding the question of probate, transmit such will, and all papers therewith connected, to the clerk of the circuit court for his county.

Right of appeal.

4. Any person interested may, within one year, or if such person be under disability, within one year after the same is removed, of right appeal to the circuit court from any order made by a recorder in relation to the probate of a will. In case of such appeal, the recorder shall transmit the will in dispute and all papers in his office in relation thereto, and copies of all orders made by him on the subject, to the clerk of the circuit court, on being requested to do so by the party taking the appeal.

Revision by Circuit Court on petition or bill in equity.

All the proceedings of recorders under the provisions of this act may be reviewed by the circuit courts within three years, or if the parties interested and wishing to have the same reviewed, be under disability, within three years after such disability is removed, upon petition or by bill in equity.

Jurisdiction of Circuit Courts not affected.

5. Nothing in this act contained shall be construed to take away from the circuit courts any jurisdiction they now have by law on the subjects referred to in this act.

Record to be kept of proceedings of Recorders.

6. In addition to the books of records now provided for by law, each recorder shall keep a book to be provided at the expense of his county, in which shall be entered and indexed all orders made by him under the provisions of this act.

List of deeds, &c., when to be posted.

7. All lists of deeds and other writings, and all commissioners' lists of fiduciaries and notices of settlements, required by law to be posted at the court house door on a county court day, shall be posted at such court house door on the second Monday in every month.

Commissioners of County Courts to report to Recorders.

8. Every commissioner heretofore appointed by any county court, who had before him, on the nineteenth day of June, eighteen hundred and sixty-three, any bonds or accounts of any fiduciaries for examination or settlement, shall complete such examination or settlement, and make report of his proceedings and return the same to the recorder of his county; and every commissioner hereafter appointed by a recorder under the provisions of this act, shall, in the performance of his duties, be governed by the provisions of this act and the laws now in force, except that said commissioner shall make return of his reports to the recorder of his county.

Duties of Commissioners appointed by Recorders.

When powers granted by first section to be exercised.

9. The recorders of the several counties of this state shall make all orders and do all things required of them to be done under and by virtue of the first section of this act, in their respective offices, on the second Monday in each month, or on the Tuesday or Wednesday following.

Fees.

10. The recorders shall be entitled for their services under the provisions of this act to the same fees that are now allowed by law to the clerks of the county courts for like services.

11. This act shall be in force from and after its passage.

CHAP. 37.—An ACT to provide a remedy where Records or Papers are lost.

Passed September 9, 1863.

Be it enacted by the Legislature of West Virginia:

Court records lost may be re-entered upon order of Court.

1. Where any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, is lost, and there can be again entered correctly, by means of any writing, any matters which were in such book, the court may cause its clerk to have such matters re-entered, and such entries shall have the same effect as the original entries.

Effect of such entries.

Lost records or papers of Clerk's or Recorder's office may be entered or filed anew.

2. Where any such book, or any book containing the record of wills, deeds or other papers, or where any paper filed in a clerk's or recorder's office, is lost, the clerk, or recorder, in whose office such book or paper was, upon the production to him of any original paper which was recorded in the said book or of any attested copy of the record thereof, or of an attested copy of any thing else in such book or of any paper so filed, shall, on application, record or file the same anew. The record shall show whether it is made from an original or a copy, and how the paper from which it was made was authenticated or attested. Such record shall have *prima facie*, the same effect that the record or paper for which it is substituted would have had.

What such new record shall show.

Effect of same.

Where the papers in a suit are lost.

3. If in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost, the court wherein the cause is, or in which, but for such loss it would or ought to be, may docket the same; and on affidavit of such loss, the cause may be proceeded in, heard and determined, upon an authenticated copy of what is lost, or proof of the contents thereof, or if the cause be in an appellate court, upon a new record made up from the records and papers of the court below, and certified by the proper officer. The court may, however, in its discretion, require new pleadings to be made up in whole or in part; and the plaintiff instead of proceeding under this section, may commence and prosecute a new suit for the same matter; and such new suit may, if the former suit was in due time, be brought within one year after such loss, notwithstanding the expiration of the time within which suit must otherwise have been brought.

Proceeding of Court in such cases.

New suit may be brought.

Within what time.

How the term "lost" used in this act to be construed.

4. When any book or paper is obliterated, defaced or injured so as to be in whole or in part illegible, or is destroyed, or carried away and concealed, or is in the possession or control of armed rebels or a public enemy, it shall be deemed lost for the purposes of this act.

Fees of Clerk for re-entering court records.

And how paid.

Fees of Recorder or Clerk for recording papers anew.

By whom paid.

Expenses in other cases, how provided for.

5. For any services of the clerk under the first section of this act, unless rendered necessary by his own neglect, the court shall allow him a reasonable compensation, which shall be chargeable on the county. For recording anew any will, deed or other paper, the recorder or clerk shall have the same fees as for the original record, to be paid by the party on whose application such new record is made. For replacing, as aforesaid, the original papers in any cause or the record in an appellate court, the costs and expenses shall be ascer-

tained under the direction of the court, and adjudged against any party or parties in the cause, or divided among them, as the court may in its discretion determine to be equitable; and so, also, where new pleadings are ordered.

How proof of lost papers and records perpetuated.

6. Any person desirous of proving the contents of any paper filed in a clerk's or recorder's office, or any thing which was of record in any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, or the record of wills, deeds or other papers, may, if such paper or book be lost within the meaning of this act, file with a commissioner holding his office under the appointment of the circuit court for the county where such paper or book was filed or kept, a petition stating the nature of the paper or record the contents of which he desires to prove, and what persons may be effected by such proof. Whereupon the commissioner shall appoint a time and place for proceeding on such petition, and cause reasonable notice thereof to be given to the parties interested. If any person who may be affected by the proof be an infant, married woman or insane, the commissioner shall appoint a guardian *ad litem* to attend to the case on his or her behalf.

Petition to Commissioner of Circuit Court.

Proceedings thereon.

Proceedings before the Commissioner.

His return of his journal and the evidence.

Effect thereof.

7. The commissioner shall, at the instance of any party interested, take in writing the evidence of the witnesses. He may adjourn from time to time, and shall keep a journal of his proceedings. He shall return the said journal, with all the evidence taken by or filed with him, to the clerk's or recorder's office in which the book or paper was that is mentioned in the petition, there to remain as evidence of rights against the parties so notified, and those claiming under them, when better evidence cannot be had.

Laws repealed.

8. Chapter one hundred and eighty of the Code of Virginia, second edition, and the eleventh, twelfth, thirteenth and fourteenth sections of chapter one hundred and seventy-six of the said Code, are hereby repealed.

9. This act shall be in force from its passage.

CHAP. 38.—An ACT for Districting the State for Representatives in the Congress of the United States.

Passed September 10, 1863

Be it enacted by the Legislature of West Virginia:

Three Congressional districts.

1. The number of members to which this state is entitled in the House of Representatives of the United States shall be apportioned amongst the several counties of the State, arranged into three districts, numbered as follows, that is to say:

First district.

Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, Doddridge, Harrison, Ritchie, Wood, Wirt, Gilmer, Calhoun, and Lewis shallform the first district;

Second district.

And the counties of Taylor, Marion, Monongalia, Preston, Tucker, Barbour, Upshur, Webster, Pocahontas, Randolph, Pendleton, Har-

dy, Hampshire, Berkeley, and Morgan, shall form the second congressional district;

Third district.

And the counties of Kanawha, Jackson, Mason, Putnam, Cabell, Clay, Wayne, Logan, Boone, Braxton, Nicholas, Roane, McDowell, Wyoming, Raleigh, Fayette, Mercer, Monroe, and Greenbrier, shall form the third congressional district.

2. This act shall be in force from its passage.

CHAP. 39.—An ACT providing for the construction of a Road in the county of Hardy.

Passed September 10, 1863.

Be it enacted by the Legislature of West Virginia:

Commissioners appointed.

1. Abijah Dolly, Alfred Zoakum, and William Lantz are hereby appointed commissioners to open a wagon road, with a grade not exceeding five degrees of elevation, from Greenland Gap Turnpike to North Fork Turnpike, in the county of Hardy. The sum of one thousand dollars is hereby appropriated for the construction of said road out of the treasury of the State, to be paid upon the order of the said commissioners, in the same manner as other appropriations from the treasury are paid.

Appropriation.

How paid.

But only as work is completed.

2. Said commissioners shall not draw any money out of said appropriation until the part of the work is completed for which such draft may be drawn, and then only upon their written statement on oath that work equal to the amount drawn is performed and the money due for the same.

Commissioners' duties.

3. The said commissioners shall superintend the construction of said road without compensation, and may receive gratuitous labor from the citizens, to aid in the construction of said road. The commissioners shall cause the road to be well made, and with as little expense as practicable, so that loaded wagons may conveniently pass the same.

4. This act shall be in force from the passage thereof.

CHAP. 40.—An ACT making appropriations for the Contingent Expenses of the Public Offices.

Passed September 11, 1863.

Be it enacted by the Legislature of West Virginia:

Auditor, Treasurer, Secretary, and Adjutant General.

1. There is hereby appropriated for the contingent expenses of the offices of the auditor, three hundred dollars; treasurer, two hundred dollars; secretary of the state, two hundred dollars; and adjutant general, three hundred dollars.

2. This act shall be in force from its passage.

CHAP. 41.—An ACT to authorize certain officers to use their private seals until provided with official seals.

Passed September 12, 1863.

Be it enacted by the Legislature of West Virginia:

What officers authorized to use private seals in certain cases.

1. It shall be lawful for every recorder, clerk of the circuit court, clerk of the board of supervisors and clerk of a township, in the several counties of the state, until provided with an official seal, to use his private seal, (or scroll by way of seal,) in all cases where the use of a seal is required by law or usage; and wherever the same is so used, his attestation of the instrument, record or copy to which it is annexed shall set forth the fact that he is not provided with an official seal; in which case, and in every case in which his private seal, (or scroll by way of seal,) or the seal of the late county court of his county, has been so used since the nineteenth day of June, eighteen hundred and sixty-three, every such instrument, record or copy shall have the same force and effect as if an official seal had been used.

To have the same force as an official seal.

2. This act shall be in force from its passage.

CHAP. 42.—An ACT to prescribe when Acts of the Legislature shall take effect.

Passed September 14, 1863.

Be it enacted by the Legislature of West Virginia:

To take effect from passage except in certain cases.

1. Every act of the legislature hereafter passed shall take effect and be in force from its passage, unless it be otherwise expressly provided in the act itself, or be manifestly inconsistent with the intention of the legislature; and the day when any act is passed shall be noted in the enrollment and printed copies thereof, next after its title.

Law repealed.

2. The third section of chapter sixteen of the Code of Virginia, second edition, is hereby repealed.

3. This act shall be in force from its passage.

CHAP. 43.—An ACT creating a Board of Public Works, and vesting it with rights, powers and duties.

Passed September 24, 1863.

Be it enacted by the Legislature of West Virginia:

Governor, Auditor and Treasurer made a Board of Public Works.

1. The governor, auditor and treasurer shall be a corporation under the style of the "Board of Public Works," and be vested with all the rights, powers and duties vested in the board of public works of the commonwealth of Virginia on the nineteenth day of June, eighteen hundred and sixty-three.

Secretary of the State made secretary of the Board. His duties. Proceedings of Board.

2. The secretary of the state shall be secretary of the board. He shall keep a record of the official acts of the board, and shall discharge such other duties as may be prescribed by the board. The proceedings of each day shall be signed by the person presiding on

that day. The said proceedings shall be, at all times, open to inspection.

3. The act passed August 5, 1863, entitled "an act conferring on the governor, auditor, treasurer, and secretary of the state the powers and duties of the board of public works," and the tenth section of chapter sixty-six of the Code of Virginia, second edition, are hereby repealed. Laws repealed.

CHAP. 44.—An ACT to provide for the Election to be held on the fourth Thursday of October, in the year eighteen hundred and sixty-three.

Passed September 24, 1863.

Be it enacted by the Legislature of West Virginia:

1. An election shall be held on the fourth Thursday of October, in the year eighteen hundred and sixty-three, for the election of delegates to the legislature for the several counties and delegate districts; one or more assessors for every county; a senator for each senatorial district; and a representative in the Congress of the United States for each congressional district; and to fill any vacancies in state or county offices which may have theretofore occurred. Election of Oct. 22, 1863. What officers to be elected.

2. If, owing to the occupation of any county by persons in rebellion or any other cause, the said election is not held in any county on the day herein appointed, the same shall be held for county officers and delegates to the legislature, on such day as may be designated by the superintendents appointed by this act to hold the election for their said county, who shall cause notice to be given of the time of holding such election, by notices posted at three public places within such county, at least ten days before the day so designated. Failure to hold election in any county, on the day appointed.

3. The said election shall be held at the several places of voting established in each county by the laws in force on the nineteenth day of June, eighteen hundred and sixty-three, notwithstanding any act passed at the present session abolishing the former election precincts and the places for holding elections therein. Places of voting.

4. The persons named in the schedule hereto annexed, being three for each county, shall act as superintendents of the said election for their respective counties. Any two of the superintendents for a county may act, and they may fill vacancies in their own body; but if there be no superintendents for any county or not more than one willing to act, the sheriff of such county shall appoint the number necessary to fill the vacancies. Three Sup'ts appointed for each county. Two may act. Vacancies provided for.

5. The superintendents for the county shall, for every place of voting therein, appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the election at the place for which they are appointed, and shall procure and furnish to them proper ballot-boxes, poll books and forms. Com'rs and conductor for each place of voting. Ballot-boxes, &c.

6. If at the time the polls should be opened, there be, at any place

Vacancies provided for.

of voting, but one commissioner willing to act, he shall associate with himself as a commissioner some freeholder of the county then present; and if there be no commissioner willing to act, any two freeholders of the county may act as commissioners. If there be no conductor present willing to act, the commissioners may appoint one. The commissioners may appoint the necessary clerks or writers.

Clerks.

Oath of Sup'ts, Com'rs, &c.

7. Every superintendent, commissioner, conductor, and clerk, before entering on the discharge of his duties, shall make oath that he will support the constitution of the United States and the constitution of this State, and that in the election about to be held, he will faithfully and impartially discharge the duties of his office according to law. The commissioners may administer the oath to each other and any one of them may administer it to the conductor and clerks.

When the polls to be opened and closed.

8. The polls shall not be opened before sunrise and shall be closed at sunset.

Who to vote.

9. The commissioners shall admit all persons to vote who are entitled to vote under the first section of the third article of the constitution; but each person present and offering to vote, shall, if required by any voter, produce to the commissioner the certificate of an officer authorized to administer oaths, that he has taken and subscribed before him the oath to support the constitution of the United States and the constitution of the state of West Virginia. And any person so entitled, who is necessarily absent from the county on the day of the election, by reason of his duties in the service of the United States or of this state, may within twenty-five days preceding the day of the election, enclose his ballot in an envelope, which he shall seal up, and write his signature in his own proper hand on the outside of the said envelope, and address the same to the superintendents of the election for the county of which he is a resident, either by their names or official designation, and transmit the same to them or one of them by mail or otherwise. And if such envelope and enclosure be received by the said superintendents or any one of them, on or before the day of the election, it shall be produced at the polls held at the court house of the county, and delivered unopened to the commissioners acting at the said court house, if a poll be held at the court house, or if not so held, then at any precinct holding the same, who, if satisfied that the signature on the outside of the envelope is genuine, and that the person whose signature is so endorsed thereon would be, if present, entitled to vote at the said polls, shall open the envelope, and if the ballot found therein be single, shall deposit the same without unfolding or unrolling it so as to disclose its contents, in the ballot-box in like manner as if the person so transmitting his vote, were personally present and offering to vote. And if such ballot be so received and deposited in the box, the clerks shall record the name of the voter on the poll book adding thereto the word "absent." The envelopes in such cases shall be preserved by the commissioners, and be filed by them as soon as possible after the close of the election, in the office of the recorder of the county for public inspection.

Oath of voter.

Votes of persons absent in the service of the U. S. or this State.

Disputed votes.

10. The commissioners, or any one of them, may swear any person to answer questions respecting any right to vote which is claimed. They shall reject the ballots of all persons not entitled to vote; and in all respects cause the said election to be impartially held according to law. The name of every person whose vote is rejected, shall, if he require it, be entered in a separate list on the poll books under the head "rejected votes;" and in such case his ballot shall be sealed up by the commissioners in an envelope or cover endorsed "The ballot of A B, rejected this twenty-second day of October, eighteen hundred and sixty-three," and be returned with the other ballots to the superintendents for the county.

Votes rejected.

Ballot-box.

11. It shall be the duty of the superintendents for each county to cause the commissioners for every place of voting in the county to be furnished with a proper ballot-box, with an aperture in the lid to receive the ballots of those entitled to vote. The box, while the polls are open, shall be kept where it may be seen by the voters. Every person desiring to vote shall offer to the conductor a single ballot or piece of white paper, on which is printed or written, or partly printed and partly written, the names of the persons for whom he intends to vote, with a designation of the office he desires each to fill; which ballot shall be so folded or rolled that its contents cannot be seen. The conductor shall proclaim the name of the person offering to vote, and hand the ballot to the commissioners, who may examine the same to ascertain if it be single, but without so far unfolding or unrolling it as to disclose its contents; and if they, or a majority of them, are satisfied the ballot is single, and that the person offering it is entitled to vote at said polls, one of the said commissioners shall deposit the ballot in the box, and the clerks shall enter the name of the voter on the poll books, which shall bear on the first page thereof the heading: "Names of all persons voting at ———, in the county of ———, on the twenty-second day of October, eighteen hundred and sixty-three."

How votes are to be received,

And deposited in the box, and entered on the poll books.

The names on the poll books to be counted, &c.

12. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the commissioners, and the number set down in words at length at the foot of the list, which shall then be signed by the commissioners, conductor and clerks. The ballot-box shall then be opened by the commissioners, and the ballots found therein be counted in the presence of all the officers employed in conducting the election, and then be again placed in the box. If the number of ballots exceed the number of the names of the voters entered on the poll books, one of the commissioners, in the presence of the other officers, shall promiscuously draw from the box as many ballots as are equal in number to the excess, which, without opening, he shall immediately destroy. One of the commissioners shall then, taking from the box one ballot at a time, read therefrom distinctly the designations of the offices to be filled, and the names of the persons voted for, and hand the ballot to the other commissioner or commissioners, who, if satisfied it was correctly read, shall deliver it to the conductor to be strung by him upon a thread. The contents of the ballots as they are read shall be entered by the clerks, under the su-

Counting the ballots.

Where the ballots exceed in number the names on the books.

Counting the votes for each candidate.

pervision of the commissioners, on books or tally papers provided for the purpose, by suitable marks opposite to or under the name of each person voted for, so as to show the number of votes received by every person for any office. If two or more ballots be found folded or rolled up together, they shall be rejected and immediately destroyed; and if any ballot be found to contain more than the proper number of names for any office, it shall not be counted as to the said office.

Ballots folded together to be rejected. Ballot containing too many names, &c.

The com'rs' certificate of the result at their precint.

13. When the result is fully ascertained, the commissioners shall immediately make and sign two certificates to the following effect: "We, the undersigned, commissioners of the election held at ———, in the county of ———, on the twenty-second day of October, eighteen hundred and sixty-three, do hereby certify, that having been first duly sworn, we have fairly and impartially held the said election according to law, and that the result thereof is as follows: For delegate A. B. received ——— votes, and C. D. ——— votes; for assessor, E. F. received —— votes, and G. H. —— votes; for senator, J. K. received —— votes, and L. M. —— votes; and for representative in the congress of the United States, N. O. received —— votes, and P. R. —— votes;" and so on, stating according to the truth the name of every person voted for for either of the said offices, and the number of votes he received for the same, and concluding as follows: "Given under our hands this —— day of October, eighteen hundred and sixty-three." The ballots shall then be enclosed by the commissioners in an envelope or cover, which they shall seal up, and write their names across the seals, and endorse on the envelope or cover the following: "Ballots of the election held at ———, in the county of ———, on the twenty-second day of October, eighteen hundred and sixty-three." The said commissioners, or one of them, shall, on or before the twenty-seventh day of October, eighteen hundred and sixty-three, deliver the ballots so sealed up, one copy of the poll books, and one of the said certificates, to the superintendents of the election for the county; and deposit the other copy of the poll books, and the other certificate, in the office of the recorder of the county, to be there preserved.

Ballots, poll books and certificates of com'rs', how disposed of.

The result in each county to be ascertained by the sup'ts.

14. The superintendents of the election for the county, or a majority of them, shall, on or before the thirty-first day of October, eighteen hundred and sixty-three, carefully and impartially ascertain from the returns received by them, as aforesaid, the result of the said election within their county. For this purpose they may, if deemed necessary and proper, open and examine any of the sealed packages of ballots; but in such case they shall seal the same up again along with the original envelope or cover, in another envelope or cover, and write their names across the seals, and endorse on the outside, "Ballots of the election held at ———, in the county of ———, this twenty-second day of October, eighteen hundred and sixty-three." When they shall have made their certificates as hereinafter provided, they shall return the ballots to the office of the recorder of the county, to be there preserved.

They may open the sealed packages of ballots.

How they are to dispose of same.

Certificates of the result in each county.

15. The superintendents of the election for each county, or a majority of them, having ascertained, as aforesaid, the result of the election

within their county, shall forthwith make and sign the requisite number of certificates to the following effect: "We, the undersigned, superintendents of the election held in the county of ———, on the twenty-second day of October, eighteen hundred and sixty-three, do hereby certify, that having first been duly sworn, we have carefully and impartially examined the returns made to us of the said election, and that, in our said county, for the office of delegate, A. B. received —— votes, C. D. —— votes, E. F. —— votes;" and so on, stating according to the truth the name of every person voted for for the said office, and the number of votes received by him in the county; and concluding as follows: "Given under our hands this —— day of ——, eighteen hundred and sixty-three." They shall in like manner and form make and sign separate certificates of the result within their county of the election for assessor or asssessors for the county, for senator in the legislature of the state, for representative in the congress of the United States, and for any officer elected to fill a vacancy.

How the certificates of the result in each county to be disposed of.

16. The certificates made and signed by the superintendents for the county, pursuant to the last section, shall be by them disposed of as follows: Of the certificates respecting the delegate election, they shall transmit one, by some safe and certain conveyance, to the clerk of the House of Delegates, at the seat of government, who shall carefully preserve the same in his office, and shall submit the same, together with a list of persons appearing thereby to be elected, to the House, as soon as it shall thereafter assemble. The said superintendents shall also, if demanded, deliver one of their said certificates to each person appearing to them to have been elected a Delegate. Of the certificates respecting the election of the assessor or assessors for the county, they shall, if demanded, deliver one to each person appearing to them to be elected to the said office. Of the certificates respecting the senatorial election, they shall transmit one by some safe and certain conveyance to the clerk of the Senate at the seat of government, who shall carefully preserve the same in his office, and submit them to the Senate as soon as it shall thereafter assemble, with a list of the persons appearing thereby to be elected. Of the certificates respecting the election of representatives in the Congress of the United States, they shall transmit one by some safe and certain conveyance to the secretary of the state at the seat of government; and in like manner shall dispose of the certificates respecting any election to fill a vacancy. And in each case they shall deposit one of their said certificates in the office of the recorder of their county, to be there carefully preserved, subject to the order of the governor or of either branch of the legislature.

Governor may send for returns.

17. When the governor for any reason, deems it necessary or proper to do so, he may by special messenger or otherwise, send for and procure proper and sufficient returns from any county or counties in which the said election shall have been held.

Representatives in Congress.

18. From the said certificates and returns respecting the election for representatives in the Congress of the United States, the Gover-

nor shall ascertain who are elected to the said office, and shall give to each of the persons so elected, a certificate under the great seal of the state, to the following effect:

"State of West Virginia, to-wit:

I ———, Governor of said state, pursuant to the act of the legislature thereof in such case made and provided, do hereby certify that A. B., of the county of ——— was duly chosen on the twenty-second day of October, in the year eighteen hundred and sixty-three, a representative in the Congress of the United States, for the —— congressional district of this state composed of the counties of ———, for the term ending on the third day of March, in the year eighteen hundred and sixty-five. Given under my hand and the great seal of the said state of West Virginia, this —— day of ———."

Number of votes to be written out in words.

19. In all certificates required by this act to be made, where the number of votes for any person is to be stated, such number shall be written out in words at length.

SCHEDULE.

SUPERINTENDENTS OF THE ELECTION FOR THE COUNTY OF

Barbour.—Peter Zinn, William K. Hall, and Martin Myers.
Berkeley.—Christian Shaffer, B. M. Kitchen, and J. D. Cookers.
Boone.—Adam Toney, William Workman, and Robinson Spurlock.
Braxton.—Craven Berry, Elmore Frame, and James G. McCoy.
Brooke.—Adam Kuhn, Joseph Applegate, and Eli Green.
Cabell.—Ephraim Frampton, Isaiah Ray, and Edward Eden.
Calhoun.—Morgan Marks, James Bier, and William Ellison.
Clay.—James Walker, Sr., William Waggy, and Guy Keith.
Doddridge.—Toliver K. Knight, Noah James, and Simeon Duckworth.
Fayette.—James Scarbrough, James Kinkaid, and William Darlington.
Gilmer.—Matthew Holt, Thomas M. Brannon, and James Cather.
Greenbrier.—J. G. Anderson, Andrew Knight, and Thomas Fewell.
Hampshire.—John Hughes, Thomas R. Carskadon, and Joseph Ritzel.
Hardy.—Abijah Dolly, Aaron Baker, and Charles Scott.
Hancock.—B. J. Smith, D. S. Nicholson, and Joseph S. Allison.
Harrison.—Alstorpheus Werniger, Benjamin F. Shuttlesworth, and John Peck.
Jackson.—Robert R. Riley, Charles Harpold, and David Woodruff.
Kanawha.—Nelson B. Coleman, James Atkinson, and Philip W. Morgan.
Lewis.—P. M. Hale, H. Daugherty, and George Dauser.
Logan.—Harvey Hinchman, Rhodes Ballard, and Matthias Brown.
Marion.—Sylvanus W. Hall, Oliver Jackson and Elmos Hamilton.
Marshall.—William Blake, J. S. Riggs, and W. J. Purdy.
Mason,—James H. Holloway, John Godley, and William Smith.
McDowell.—John Charles, James Mitchell, and Samuel Lambert.

Mercer.—Sylvester Upton, Andrew J. Thompson, and Patton A. McKinney.
Monongalia.—David H. Chadwick, George R. Dering, and Jesse Mercer.
Monroe.—John M. Hutchison, James Chambers, and Caperton McNeer.
Morgan.—Daniel Unger, Jacob Cann, and Thomas Tritapoo.
Nicholas.—John Groves, sr., George Brown, and John R. McCutchen.
Ohio.—William M. Berryhill, Samuel Irwin, and Arthur C. Boggs.
Pendleton.—Sampson Day, Reuben Vance, and Michael Mouse.
Pleasants.—R. Patterson, William Carroll, and Josiah Powell.
Pocahontas.—Benjamin F. Armstrong, David M. Burgess, and John E. Adkinson.
Preston.—Robert McCafferty, Peter S. Barrick, and John S. Murdoch.
Putnam.—Dudley S. Montague, William Cash, and Joseph C. Gery.
Raleigh.—John S. Euart, Andrew J. Harper, and Samuel McGinnis.
Randolph.—Willis J. Drummond, Asbury Stalnacker, and Harmon Snyder.
Ritchie.—John B. Yeager, Thomas Reitz, and Alexander Lowther, jr.
Roane.—H. D. Chapman, James A. Daniell, and Isaac McKown.
Taylor.—James W. Burdett, Thomas Cather, and Stephen Behen.
Tucker.—David Wheeler, Adam H. Bowman, and Adam Tate.
Tyler.—Z. Peirpoint, Levi Heysham, and Robert Stathers.
Upshur.—Thomas J. Farnsworth, Edward J. Colerider, and Simon Rohrbough.
Wayne.—John S. Hutcherson, Thomas Huxam, and M. C. Newman.
Wetzel.—Jacob Young, W. D. Walker, and George W. Bier.
Webster.—Adam G. Gregory, William G. Hamrick, and James P. Green.
Wirt.—M. L. Lockhart, H. W Rockhold, and William D. Timms.
Wood.—Bennett Cook, Edward Tracewell, and Rufus Kinnaird.
Wyoming.—Capt. William Walker, Capt. James Cook, and Bullard Shannon.

CHAP. 45.—An ACT in relation to Suits against Non-Residents.

Passed September 25, 1863.

Be it enacted by the Legislature of West Virginia:

1. Section first of chapter one hundred and fifty-one of the Code of Virginia, second edition, shall be amended and re-enacted to read as follows: Section 1 of chapter 151 amended and re-enacted

"1. When any suit is instituted for any debt or for damages for breach of any contract, on affidavit stating the amount and justice of the claim, that there is present cause of action therefor; or where it is to recover damages for any wrong, stating a certain sum, which, at the least, the affiant believes the plaintiff is entitled to, or ought to recover; that the defendant or one of the defendants is not a resident of this State, and that the affiant believes he has estate or debts due him within the county in which the suit is, or that he is sued with Recovery of damages.

a defendant residing therein, the plaintiff may forthwith sue out of the clerk's office an attachment against the estate of the non-resident defendant for the amount so stated."

CHAP. 46.—An ACT providing for and regulating Township Meetings and Elections.

Passed September 25, 1863.

Be it enacted by the Legislature of West Virginia:

First township meeting and election.

1. The first meeting of the voters of each township, and the first election therein for township officers, shall be held on the day, at the place, and in the manner, directed in the schedule hereto annexed; and shall be conducted according to the provisions contained in the body of this act applicable thereto, except so far as the same are changed or modified as to the said first meetings and elections by the provisions of the said schedule. All subsequent annual township meetings and elections shall be held on the fourth Thursday in April in each and every year, at such convenient place within the township as shall be from time to time appointed by the board of supervisors of the county.

Annual meetings and elections, when and where held.

Chairman of meetings.

Clerk of same.

Duties of.

2. The supervisor of the township shall be chairman of the township meetings but if he be absent, the qualified voters at such township meeting may choose a chairman. The township clerk shall be clerk of the township meetings, and shall keep faithful minutes of the proceedings, and shall enter at length every order or direction, and all rules and regulations made by the meeting. If the township clerk be absent, the voters present shall select another person to act as clerk of the meeting. The minutes of each meeting shall be signed by the chairman and attested by the clerk.

How minutes signed.

At what hour meetings to assemble.

3. Every annual towship meeting shall assemble for the transaction of business at the hour of nine in the forenoon of the appointed day; and at any annual or special election of township officers, if there is a township meeting on the same day, the polls shall be opened at the hour of eleven, unless the business of the meeting be sooner concluded, or the same be sooner adjourned, in which case the polls may be opened immediately thereafter, and in either case shall continue open, (with a recess of not more than one hour, if the inspectors so direct, at such time as they may appoint,) until sunset of the same day when the polls shall be finally closed. If the meeting has not completed its business when the hour for opening the polls arrives, it may adjourn until the next day, and from day to day until its business is completed. Meetings appointed for a day on which there is no public election held in the township, may be appointed for and held at such hour, not later than three in the afternoon, as may be indicated in the notice convening them.

Opening and closing of polls.

Hour of meeting.

Legal meeting how constituted.

4. To constitute a legal township meeting, the fact must appear and be entered on the minutes, that notice of the time and place of hold-

ing the same has been duly given as required by law; and that there are present, if the township is entitled to elect but one justice, at least twenty voters thereof, and if it is entitled to elect two justices, at least thirty such voters; but if due notice has been given, a less number in either case may adjourn to another day. Any meeting duly constituted and held may adjourn from day to day or to a day certain; or it may direct another meeting to be convened and held on such day previous to the next annual meeting, as it may appoint. Special meetings shall be convened whenever directed by the supervisor of the township, or whenever any ten voters thereof, by writing, stating the object of the proposed meeting, signed with their proper hands, and filed with the clerk of the township, shall so request. Of the time and place of holding all meetings to be held in pursuance of adjournment, unless from day to day; of all special meetings, and of the annual meetings, the clerk shall cause notice to be given in the manner hereinafter directed; but the annual meetings shall not fail for want of such notice, if the number of voters present be sufficient. No business besides that mentioned in the notice convening it shall be transacted at a special meeting.

Adjournment.

One meeting may call another.

Special meetings how called.

Notice to be given of all meetings.

But annual meetings not to fail for want thereof.

Business of special meetings.

5. At every township meeting all propositions, motions, orders and resolutions properly presented by any voter of the township and seconded by another, shall be distinctly put to vote by the presiding officer, and be decided by the votes given by a majority of the voters present and voting on the question. The mode of voting shall be by an oral vote in the usual manner, or by a show of hands, or if the chair so direct, or any voter demand it before the result of the vote is announced, there shall be a division and count; in which case the chair may direct those voting affirmatively to go to his right, and those voting negatively to go to his left, and all persons present not entitled to vote, to retire beyond such limit as he may designate; when he and the clerk shall ascertain the numbers voting each way, and the result however ascertained, shall be announced by the chair and recorded on the minutes of the meeting by the clerk. When any proposition, motion, order, or resolution is offered, any voter present may move to amend the same, and if the question before the meeting admits, different numbers or times may be proposed by the voters present; in which case the vote shall first be taken on the greatest number or longest time; and so on until some number or time proposed receives a majority of the votes given. In cases of appointments to be made by the meeting, any voter may propose a candidate, and if two or more are proposed and the number of votes given for each cannot be otherwise conveniently ascertained, the chair may direct those voting for each candidate to separate themselves from all others; when he and the clerk shall proceed to ascertain the members voting for each candidate; and if neither has a majority, the vote shall be repeated until there is a majority for one of the nominees. The clerk shall record on the minutes, the result of the deciding vote only. In all other respects, the proceedings of the meeting shall be conducted with reference to the usual parliamentary rules applicable to the case before

Manner of conducting business of meetings.

it; but no question already disposed of at a township meeting, shall be reconsidered, unless the motion for such reconsideration shall be sustained by a number of votes equal to a majority of the highest vote recorded at such meeting, up to the time such motion shall be made. If questions of order arise, they shall be promptly decided by the chair, from whose decision there may be an immediate appeal to the meeting, the question arising on which, shall be stated by the chair and be put without discussion.

Terms of officers.

6. The terms of all township officers, including the supervisors, not elected to fill a vacancy, shall commence and be computed from the twentieth day of June next after the annual election at which they are elected. Elections to fill vacancies shall be for the unexpired term; and the persons elected, having first duly qualified, shall enter upon the duties of their respective offices within ten days after the board of supervisors have declared them elected. In case of a vacancy in any township office except that of inspector of elections, the supervisor may, if he deem proper, and shall, if requested in writing by any ten voters of his township, direct a special township meeting to be held at such time as he may appoint, for the purpose of filling such vacancy; and such meeting, when duly constituted, shall proceed to appoint a suitable person to exercise the powers, discharge the duties and receive the emoluments of such office until the twentieth day of June first after the next annual township election. At such election, if the vacant office is elective, and the term of the former incumbent does not expire on the said twentieth day of June, a suitable person shall be elected to fill such office from the said day until the expiration of said term.

Vacancies.

Special meetings called to fill.

How Clerk shall give notice of meetings.

7. When notice is required to be given of any township meeting, election, or other proceeding or matter, the clerk of the township shall prepare a suitable notice of the same and three copies thereof, all of which he shall sign with his name and official designation, and shall cause the said copies, respectively, to be conspicuously posted at three of the most public places in his township by a constable thereof, or in case of his absence from the township or inability to act, by some other person, for which service and making affidavit of the time and manner of performance thereof, and returning the same to the clerk, the said officer or person shall be entitled to receive from the township treasury, for each copy duly and properly posted and affidavit thereof returned as aforesaid, a fee of fifty cents. The original notice, with the affidavit or affidavits of the officer or person who posted the copies annexed or attached, shall be filed by the clerk in his office. All notices of township meetings and elections shall be so posted at least ten and not more than twenty days before the time appointed; and at least ten days notice shall be given of any matter or event in which the township is interested of which notice is required. Any township meeting at which such business is in order, may from time to time prescribe the places at which notices shall be posted, and may also in any case direct a copy of the required notice to be inserted in some newspaper circulated in their township, at the

Fees for same.

Time of such notice.

Place of posting notice how prescribed.

Notice may be advertised in newspapers.

expense thereof. But no annual meeting or annual election, or any proceeding thereof or thereat, shall be deemed illegal for want of such notice. Every notice convening a special or adjourned meeting shall plainly state the objects or purposes for which the same is convened.

But annual meetings and elections not illegal for lack of notice.

What notice to contain.

SCHEDULE.

1. The first township meetings and elections in the several townships of the state, shall be held at such place within each township, and at such time, as may be designated by the commissioners thereof, or a majority of them, appointed by an act passed at the present session of the legislature, entitled "an act to provide for the division into townships of the several counties of the state;" but if owing to the occupation of any county or part thereof by persons in rebellion against the United States, or any other cause, the said first meeting and election is not held in any township on the day appointed, the same shall be held on such day as may be designated by the commissioners thereof appointed as aforesaid, for the county wherein such township is situated. The said commissioners shall cause notice to be given of the time and place of holding such meeting and election, by notices posted at three public places within such township, at least ten days before the day so designated. But if from any cause, the commissioners in any county shall fail to fix a day for the first meeting and election in any township, then any three qualified voters thereof may call a meeting and election of the voters of such township, by giving the like notice required to be given by the commissioners aforesaid.

Time and place of holding first meetings and elections by whom fixed.

If not held according to appointment.

Commissioners to name another day.

Commissioners' notice.

If commissioners do not fix a day, the alternative.

2. When the hour of nine in the forenoon of the day appointed for holding the first township meeting and election has arrived, any voter present may call the meeting to order, which shall be thereupon organized by the appointment of a temporary supervisor and clerk; and when organized, if the number of voters requisite to constitute a quorum be present, shall proceed to appoint two temporary inspectors of elections, who, together with the temporary supervisor and clerk, shall exercise the powers and discharge the duties in reference to superintending, conducting and certifying and returning the results of the election to be held in such township on the same day, as are reposed in and required of such officers by the provisions of the general election law.

Manner of business in first meeting and election.

3. The first meeting in each township shall appoint a committee of three or more voters, who shall, as soon as practicable thereafter, proceed to divide the township into as many road precincts as the meeting shall direct, or if no such direction be given, as the committee shall deem proper and convenient, not including the streets or roads within a city or incorporated town which levies an annual tax and provides for keeping the streets or roads within the same in order. The committee shall report the division made by them, to a special township meeting, the time and place for holding which shall be fixed

Committee to divide townships into road precincts. Their duties.

Their report.

by the first meeting, of which the clerk of the township shall cause due notice to be given. If the division of the committee, as reported by them, or as amended by the meeting, is then adopted, or whenever the same is adopted, an election for a surveyor of roads for each road precinct, being a voter and resident thereof, shall be held, if in the opinion of the meeting there is time, on the same day, and if otherwise, on the next day, at such hour as it may appoint. Such election shall be superintended and conducted and the result ascertained, certified and returned as other township elections; but if any ballot contain the names of two or more persons residing in the same road precinct, it shall not be counted for either.

Road Surveyors how elected.

Terms of officers first elected.

4. The terms of office of the officers elected at the first township elections, if the same are held before the time for holding the state and county elections in the present year, shall commence on and include the tenth day after their respective elections, but shall continue and be computed as if the same had begun on the twentieth day of June, in the present year. But if the time of holding the first election occurs after the said state and county elections, and before or at the time appointed for holding the annual township elections in the year one thousand eight hundred and sixty-four, the terms of the officers then elected shall commence on and include the tenth day thereafter, but shall continue and be computed as if the same had begun on the twentieth day of June next.

CHAP. 47.—An ACT making an appropriation for the payment of Capt. Evan C. Harper's company of Home Guards.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

One thousand dollars appropriated.

1. A sum not exceeding one thusand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying Capt. Evan C. Harper's company of home guards, of the county of Pendleton, for services rendered to the state of Virginia; provided the same be received as full compensation for their services prior to June twentieth, eighteen hundred and sixty-three.

As full compensation to certain date.

2. When satisfactory evidence of the service of said company is produced to the governor, he is hereby authorized to draw his warrant on the auditor for a sum not exceeding one thousand dollars, to pay for said service, and the auditor is hereby required to pay the same out of any money in the treasury not otherwise appropriated.

CHAP. 48.—An ACT to regulate the remission of Fines and Penalties, by the Executive.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

In what cases the Govern'r may act

1. Where any fine or penalty has heretofore been imposed under the laws of Virginia or of this state, or shall hereafter be imposed under

the laws of this state, if the same or any portion thereof would, when collected, be payable into the treasury and has not been so paid, the governor may, on good cause shown by affidavit, or upon the recommendation of the judge and a majority of the jury who tried the case, remit so much thereof as may be payable into the treasury, or a less amount, unconditionally, or upon such terms and conditions as may seem to him right and equitable. But of every order issued by him under this act, due record shall be made by the secretary of the state on the journal of executive proceedings, and reported to the Legislature.

Record of orders to be kept by the Secretary and reported to Legislature.

CHAP. 49.—An ACT for the relief of William H. Shaw, Sheriff of Putnam county.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

1. The auditor is hereby instructed to credit William H. Shaw, sheriff of Putnam county, with twenty-three dollars in the settlement of the said Shaw for the revenue of said county for the year eighteen hundred and sixty-two; the said sum having been taken by force, by armed rebels, from Benjamin P. Morris, deputy of said sheriff, in January, eighteen hundred and sixty-three.

Twenty-three dollars allowed in settlement.

CHAP. 50.—An ACT for the relief of S. S. Lockney, Commissioner of the Revenue for Barbour county in the year eighteen hundred and sixty-one.

Passed September 29, 1863.

Be it enacted by the Legislature of West Virginia:

There is hereby appropriated the sum of fifty dollars for the benefit of S. S. Lockney, of Barbour county, for services as commissioner of the revenue for said county in the year eighteen hundred and sixty-one.

Fifty dollars appropriated.

CHAP. 51.—An ACT regulating the penalty of the Bond of the Sheriff of Kanawha county.

Passed September 30, 1863.

Be it enacted by the Legislature of West Virginia:

The penalty of the first official bond required of the sheriff of Kanawha county for the faithful performance of his official duties shall not exceed twenty-five thousand dollars. But the circuit court of the county or the judge thereof in vacation may increase the penalty.

Not to exceed $25,000. But may be increased.

CHAP. 52.—An ACT supplementary to the Act passed September 24, 1863, entitled "An Act to provide for the election to be held on the fourth Thursday of October, in the year eighteen hundred and sixty-three."

Passed September 30, 1863.

Be it enacted by the Legislature of West Virginia:

1. A commissioner or conductor at any place of voting may administer the oath to support the constitution of the United States and the

Conductors or Com'rs to administer oaths.

constitution of this State to any person offering to vote at such place who may have been required by a voter to take the same; and if the person offering to vote take the oath before a commissioner or conductor, as aforesaid, no written evidence or certificate of his having taken and subscribed the same need be produced.

Effect of same.

Election of Assessors.

2. There shall be elected on the fourth Thursday of October, eighteen hundred and sixty-three, in each of the counties in this State, by the voters thereof, one or more assessors for the term ending on the first day of January, eighteen hundred and sixty-five, to fill the vacancy now existing in said offices; that is to say, the counties of Barbour, Greenbrier, Hampshire, Hardy, Harrison, Kanawha, Lewis, Marshall, Marion, Mason, Monongalia, Monroe, Ohio, Preston, Randolph, and Wayne, shall each elect two assessors, one for each of the present revenue districts into which the said counties are now respectively divided; and the other counties shall each elect one assessor.

Number elected by counties respectively.

Oath and Bond.

3. Every assessor, elected as aforesaid, shall qualify and give bond within the time prescribed by law. His bond shall be in the penalty of three thousand dollars, to be approved by the recorder of the county, and filed in the office of the said recorder.

CHAP. 53.—An ACT for the relief of William Nixon, Collector of the Revenue for Wayne county.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

Allowed $845 in settlement.

The auditor is hereby instructed to credit William Nixon, collector of the revenue for Wayne county, with eight hundred and forty-five dollars, in the settlement of the said Nixon for the revenue of said county for the year eighteen hundred and sixty-two, the said sum having been taken from said William Nixon by force, by some rebels, in September, eighteen hundred and sixty-two.

CHAP. 54.—An ACT to regulate the Tax on Seals.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

What seals taxed

How much.

1. When the seal of a recorder, of a court, of a notary public, or the seal of the state, is annexed to any paper, except in those cases exempted by law, the taxes shall be as follows: For the seal of the state, one dollar; and for any other seal, fifty cents; and the tax shall be the same though a scroll be used in lieu of an official seal.

Exception.

2. No tax shall be levied, or fee be charged, when the seal of the state is affixed to the commission of a judge or military officer.

Law repealed.

3. The forty-second section of the act of the general assembly of Virginia, passed February third, eighteen hundred and sixty-three, entitled "an act imposing taxes for the support of the government," is hereby repealed.

CHAP. 55.—An ACT to provide for the sale of certain property distrained or levied upon.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

Sections thirty-seven and thirty-eight of chapter forty-nine of the Code of Virginia, shall be amended and re-enacted to read as follows: **Laws amended and re-enacted.**

"37. In any case of goods and chattels which an officer shall have distrained or levied upon or may hereafter distrain or levy upon, otherwise than under an attachment, which he may be directed to sell by an order of court, judge, or justice, (unless such order prescribes a different course,) he shall fix upon a time and place for the sale thereof, and publish notice of the same at least ten days, at some place near the residence of the owner, if he resides in the county, and at two or more public places in the officer's county or district. If the goods and chattels be slaves, mules, work oxen or horses, notice of the sale, which shall be conducted as prescribed in the next succeeding section, shall be published at the door of the court house of such officer's county, and at two or more other public places in such county (one of which shall be near the residence of the owner, if he reside in the county,) for at least twenty days. At the time and place so appointed, the officer shall sell to the highest bidder, for cash, the said goods and chattels, or so much thereof as may be necessary. **Twenty days notice of sale to be given.**

"38. If such goods and chattels be slaves, mules, work oxen or horses, they shall be sold at the court house of the county, between the hours of ten in the morning and four in the afternoon. The sale shall be on the second Monday in the month, or on a circuit court day, except where the parties shall, at or before the time for advertising the same, in writing, authorize the officer to dispense with the provisions of this section, in which case the sale shall be according to the preceding section." **Day of sale.**

CHAP. 56.—An ACT accepting the conditions of the Act of Congress of July second, eighteen hundred and sixty-two, donating public lands to the several States and Territories which may provide Colleges for the benefit of Agriculture and the Mechanic Arts.

Passed October 3, 1863.

WHEREAS, by an act of congress approved July second, eighteen hundred and sixty-two, there is granted to the several states for the purposes mentioned in the said act, an amount of public land, to be apportioned to each state, equal to thirty thousand acres for each senator and representative in congress, to which the states are respectively entitled under the census of eighteen hundred and sixty; but the secretary of the interior is thereby directed to issue to each of the states in which there is not the quantity of public lands subject to sale at private entry, at one dollar and twenty-five cents per acre, to which said state may be entitled under the provisions of the said act, landscrip to the amount in acres for the deficiency of its distributive share, **Act of Congress recited.**

said scrip to be sold by said states and the proceeds thereof applied to the uses and purposes prescribed in the said act, and for no other use or purpose whatsoever; and whereas, it is also provided by the said act of congress that in no case shall any state to which land-scrip may thus be issued be allowed to locate the same within the limits of any other state or of any territory of the United States, but their assignees may thus locate said land-scrip upon any of the unappropriated lands of the United States, subject to sale at private entry at one dollar and twenty-five cents, or less, per acre; and whereas, it is further provided by the said act that the grant thereby authorized shall be made on certain conditions therein expressed, to which, as well as the provisions in the said act contained, the previous assent of the several states shall be signified by legislative acts; and that no state shall be entitled to the benefit of the said act of congress unless it shall express its acceptance thereof by its legislature within two years from the date of the approval of the said act by the president.

And whereas, it is manifestly to the interest of the good people of West Virginia that the said act of congress should be accepted on their behalf, and provision made according to the terms of the said act for establishing, within five years from the date of its approval, a college for the purposes therein indicated. Therefore,

Be it enacted by the Legislature of West Virginia:

Conditions of the act accepted.

1. The act of congress approved the second day of July, eighteen hundred and sixty-two, entitled "an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," with all the conditions and provisions therein contained, is hereby accepted on behalf of the state of West Virginia, with the desire hereby expressed by the legislature, that should a doubt arise whether said state is a grantee under the act aforesaid, then that the provisions of said act may be extended to our state by future legislation of congress; and the governor of this state is directed to certify this act to the president of the United States and the secretary of the interior, and to receive from the said secretary the land-scrip to which this state is or may be entitled under the said act of congress, divided, if practicable, into scrip for sections, half sections, and quarter sections, and to advertise the same for sale, and sell the same, at such time or times, and in such parcels, as he may find the interest of the trust to require.

Duty of the Governor.

Fund, how invested.

2. All money derived from sales of the said land-scrip shall be invested by the governor in stocks of the United States, yielding not less than five per centum upon the par value of the said stocks; and upon every certificate of stock received as aforesaid, he shall forthwith cause to be plainly written or printed the following words: "Held by the state of West Virginia in trust, under the act of congress approved July second, eighteen hundred and sixty-two, entitled 'an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts.'"

To remain perpetual.

3. The money so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, except so far as is

provided in the fourth section of this act; and the interest of which shall be inviolably appropropriated to the endowment, support and maintenance of a college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

Interest, how applied.

Object of the college.

4. If any portion of the fund so invested, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by this state, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the third section of this act; except that a sum not exceeding ten per centum upon the amount received by this state under the provisions of the said act of congress, may be expended for the purchase of land for sites or experimental farms, whenever authorized by the legislature of this state.

Losses of fund to be replaced by the State.

Interest only to be expended.

Exception.

5. No portion of said fund, nor the interest thereon, shall be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation or repair of any building or buildings.

No portion to be expended for building.

6. This state shall, within five years from the said second day of July, eighteen hundred and sixty-two, provide one college as described in the third section of this act, or the grant to this state shall cease, and the state shall be bound to pay to the United States the amount received of any lands previously sold.

Time when college to be established.

7. An annual report shall be made regarding the progress of the college, recording any improvements and experiments made, with their cost and results, and such other matters, including state, industrial, and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail, free, by the said college to all the other colleges that may be endowed under the provisions of the said act of congress; and also one copy to the secretary of the interior.

Annual report of college.

8. The governor of this state shall, as required by the eighth section of the said act of congress, report annually to congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Annual report of Governor.

9. The sum of five hundred dollars, to be paid out of the treasury on requisitions of the governor, is hereby appropriated to defray any expenses that may be incurred in procuring the said land-scrip, advertising and selling the same, and investing the proceeds.

Appropriation.

CHAP. 57.—An ACT declaring how certain provisions of the Code of Virginia shall be construed.

Passed October 3, 1863.

Be it enacted by the Legislature of West Virginia:

Day of County Court construed to mean second Monday of the month.

Any provision of the Code of Virginia directing or authorizing an act to be done, or proceeding to take place on the first or any subsequent day of the term of a county court, shall be construed as if the time thereby appointed for such act or proceeding was the second Monday of the month; but this shall not be deemed to apply to orders of publication or to any other act or proceeding which is or may be otherwise specially provided for.

Exception.

CHAP. 58.—An ACT providing how Lands heretofore or hereafter sold for Taxes and not redeemed, shall be Surveyed and Conveyed.

Passed October 7, 1863

Be it enacted by the Legislature of West Virginia:

Redemption money in certain cases, to whom paid.

What is authorized to be paid under the fourteenth section of chapter thirty-seven of the Code of Virginia (edition of eighteen hundred and sixty) to the clerk of the court of any county, may be paid to the recorder of the county.

Report of Surveyor, how returned.

Any plat and certificate or report to be returned or made to any county court, under the fifteenth and sixteenth sections of said chapter, shall be returned or made to the circuit court of such county, or to the judge thereof in vacation.

Proceedings heretofore in County Court to be had in Circuit Court.

Any proceeding or order to be had or made in or by the county court of any county, according to the provisions of said chapter, shall be had or made in or by the circuit court for the county, or by the judge thereof in vacation.

Orders of Circuit Judge, where returned and recorded.

Any order made by virtue of this act by a judge in vacation, shall be returned by him to the clerk of the circuit court of the county wherein the sale was made, and shall be by such clerk forthwith entered of record in the law order book of said court.

Deeds, by whom made.

Any deed to be made under said chapter by the clerk or deputy clerk of the county court, shall be made by the recorder of the county, unless he is interested, and then it shall be made by the clerk of the circuit court of the county; in

Contents thereof.

which deed shall be set forth all the circumstances appearing in the circuit court clerk's office, or in the recorder's office, in relation to the sale, and it shall conform in all other respects to the requirements

Where recorded.

of said chapter. Deeds required by said chapter to be recorded in the court of any county, shall be recorded in the office of the recorder of the county.

Fees for.

For every deed executed under this act, the clerk of the circuit court or recorder shall be entitled to one dollar and fifty cents; which the purchaser shall pay him on the delivery of the deed.

CHAP. 59.—An ACT to alter part of the division line between the counties of Wood and Wirt.

Passed October 7, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between Wood and Wirt counties changed.

1. The division line between the counties of Wood and Wirt, running from the Little Kanawha river towards the county of Jackson, is

hereby so altered as to extend the same from the Limestone Hill, on the top of the ridge, to the line between the counties of Jackson and Wood, making a straight line from the said river to the said line of the county of Jackson; and so much of the county of Wood as lies to the east of the said extension is hereby annexed to and made part of the county of Wirt.

Surveyor of Wirt county to make plats of survey.

2. The annexation herein provided for shall not be of force until the surveyor of the county of Wirt shall run and mark the said extension, and make three fair plats thereof, each of which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Wood, and the third to the recorder of the county of Wirt; who shall file and carefully preserve the same in their respective offices.

How same disposed of.

Fees of Surveyor paid from the treasury of Wirt.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Wirt.

CHAP. 60.—An ACT to give the Circuit Courts jurisdiction in suits for the maintenance of illegitimate children.

Passed October 8, 1863.

Be it enacted by the Legislature of West Virginia:

Chapter 125 of the Code amended.

The one hundred and twenty-fifth chapter of the Code of Virginia, second edition, shall be amended by striking out of the first section of the said chapter the words "court for the county or corporation," and inserting in place thereof the words "term of the circuit court for the county;" and by striking out of the sixth section of said chapter the words "court of the county or corporation," and inserting in place thereof the words "circuit court of the county."

CHAP. 61.—An ACT to alter part of the division line between the counties of Ritchie and Gilmer.

Passed October 8, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between Ritchie and Gilmer counties altered.

1. The division line between the counties of Ritchie and Gilmer is hereby so altered as to annex to, and include within the county of Ritchie the dwelling house and curtilage of Elisha L. Snodgrass, and so much additional land as may be necessary to straighten, as far as practicable, the said division line; but the territory thereby added to the county of Ritchie shall not exceed in the aggregate one hundred and fifty acres.

Surveyor of Ritchie county to make plats of survey.

2. The annexation herein provided for shall not be of force until the surveyor of the county of Ritchie shall run and mark the said alteration of the said division line, and make three fair plats thereof, each of which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Gilmer, and the

How same disposed of.

third to the recorder of the county of Ritchie; who shall file and carefully preserve the same in their respective offices.

Fees of Surveyor paid from the treasury of Ritchie.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors and paid out of the treasury of the county of Ritchie.

CHAP. 62.—An ACT to alter part of the division line between the counties of Taylor and Harrison.

Passed October 9, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between the counties of Taylor and Harrison altered.

1. The division line between the counties of Taylor and Harrison is hereby so altered as to include within and make part of the county of Taylor the farms of Solomon Frum, George Bailey, Silas P. Bailey, and Samuel Bartlett, now in the county of Harrison.

Surveyor of Taylor to make plats of survey.

2. The alteration herein provided for shall not be of force until the surveyor of the county of Taylor shall run and mark the new line or lines, and make three fair plats thereof, which he shall duly certify,

How same to be disposed of.

and forward one to the secretary of the state, another to the recorder of the county of Harrison, and the third to the recorder of the county of Taylor; who shall file and carefully preserve the same in their respective offices.

Fees of Surveyor paid from the treasury of Taylor.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Taylor.

CHAP. 63.—An ACT to alter part of the division line between the counties of Raleigh and Mercer.

Passed October 10, 1863.

Be it enacted by the Legislature of West Virginia:

Division line between the counties of Raleigh and Mercer altered.

1. The division line between the counties of Raleigh and Mercer is hereby so altered as to run as follows, to-wit: Beginning at the mouth of Madam's creek, at a corner of the counties of Raleigh, Greenbrier, Mercer and Monroe, and running thence up New river, with the meanders thereof, to the mouth of Big Bluestone run; thence up the same, with the meanders thereof, to the mouth of Little Bluestone run, and thence with the road up the mountains, passing the residence of Jonathan Lillies and Jacob Manns, to the old line between the counties of Mercer and Raleigh.

To be ratified by the voters of the counties.

2. The alteration herein provided for shall not be of force unless the same is ratified by a majority of the votes cast, "for alteration" and "against alteration," at the first township election to be held in the county of Raleigh, and also by a majority of the votes cast as aforesaid, at the first township election to be held in the county of Mercer, nor unless the surveyor of the county of Raleigh shall run

Surveyor of Raleigh to make plats of survey.

and mark the above described new lines, and make three fair plats

thereof, which he shall duly certify, and forward one to the secretary of the state, another to the recorder of the county of Mercer, and the third to the recorder of the county of Raleigh; who shall file and carefully preserve the same in their respective offices. How same to be disposed of.

3. The superintendents of election of each county shall cause notice to be given of the vote to be cast for and against the alteration of said line, at least ten days before the day of election, by posting up notices at some public place in each township. Notice of election or ratification.

4. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Raleigh. Fees of Surveyor paid from the treasury of Raleigh.

CHAP. 64.—An ACT concerning the county of Clay.

Passed October 10, 1863.

Be it enacted by the Legislature of West Virginia:

1. The boundary lines of the county of Clay as established by an act of the general assembly of Virginia, entitled "an act to form the county of Clay out of part of the counties of Braxton and Nicholas," passed March twenty-ninth, eighteen hundred and fifty-eight, shall be the boundary lines of said county of Clay; and so much of the territory, late of the county of Kanawha, as is included within the said lines, is and shall continue to be part of the county of Clay. Boundary lines confirmed.

2. The name of the county seat of the county of Clay is hereby changed to Henry, by which name it shall hereafter be known and denominated. Name of county seat changed.

CHAP. 65.—An ACT to authorize the Clerk of the Circuit Court to issue Executions on Judgments of Justices in certain cases.

Passed October 10, 1863.

Be it enacted by the Legislature of West Virginia:

1. Every execution issued by a justice, which, according to the ninth section of chapter one hundred and fifty of the Code of Virginia, second edition, should be returned by the constable to the clerk's office of the court by which he was appointed, shall be returned by the constable to the clerk's office of the circuit court of the county. Executions of Justices returnable to circuit clerk.

2. The clerk of the circuit court shall docket all executions hereafter returned by a constable as aforesaid, and index the same in the name of both plaintiff and defendant, and file them alphabetically in a separate bundle for each year; for which service the clerk shall be entitled to a fee, to be paid by the plaintiff in each case, of twenty cents. Such further executions may be issued for the recovery of the amount due on any execution so returned, as if the judgment had been rendered in the circuit court. The same may, at the option of the plaintiff, be directed to and executed by a constable or sheriff; and the same proceedings shall be had as upon executions issued upon judgments of the circuit courts. How disposed of by him. His fee. New executions. How proceeded on.

New executions on those already returned.

3. And where executions issued by a justice have been heretofore returned to the clerk's office of a county court, the clerk of the circuit court may issue further executions thereon to be directed and executed, and have the same effect, as the executions to be issued by him under the provisions of the preceding section.

Clerk to issue executions on judgments of Justices

4. Where a judgment for a fine has been or shall be rendered by a justice and returned, pursuant to the sixth section of chapter forty-three of the Code of Virginia, second edition, to the clerk's office of a county court or a circuit court, the clerk of the circuit court may issue executions thereon.

Proviso.

5. Nothing herein contained shall be construed to authorize any execution to be issued in contravention of the act of the general assembly of Virginia, passed January thirtieth, eighteen hundred and sitxy-three, entitled "an act staying the collection of certain debts."

CHAP. 66.—An ACT to repeal certain provisions of the Code of Virginia concerning Slaves and Free Negroes.

Passed October 12, 1863.

Be it enacted by the Legislature of West Virginia:

The seventh and eighth sections of chapter one hundred and four, the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth sections of chapter one hundred and five, and the twenty-sixth, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, and thirty-seventh sections of chapter one hundred and ninety-eight of the Code of Virginia, edition of eighteen hundred and sixty, are hereby repealed.

CHAP. 67.—An ACT fixing the pay of the Sergeant-at-Arms of the Senate.

Passed October 12, 1863.

Be it enacted by the Legislature of West Virginia:

Three dollars per diem.

The sergeant-at-arms of the senate shall, during the session of that body, receive three dollars per day.

CHAP. 68.—An ACT to remove the Seat of Justice of Hampshire county temporarily to Piedmont.

Passed October 13, 1863.

Be it enacted by the Legislature of West Virginia:

Seat of justice transferred.

1. The circuit court of Hampshire county shall be held, and the recorder's office of the said county be kept, in the town of Piedmont instead of Romney, until the governor, by his proclamation, shall direct the same to be removed to the said town of Romney.

Authority of the Governor to re-establish.

2. The records, books and papers pertaining to the said court and recorder's office shall be removed to the said town of Piedmont, as speedily as may be practicable, and be retained there in the care and custody of the proper officers, until the governor, by proclamation, direct the same to be returned to and kept at the said town of Romney. Records, &c., to be transferred. To be returned on order of the Governor.

CHAP. 69.—An ACT to authorize the Supension of Specie Payments till March first, eighteen hundred and sixty-five.

Passed October 14, 1863.

Be it enacted by the Legislature of West Virginia:

1. So much of any law as may subject and bank of circulation now in operation in this state to the forfeiture of its charter, or to any other penalty, for failing or refusing to redeem its notes or debts in specie, shall be and the same is hereby suspended until the first day of March, eighteen hundred and sixty-five. Laws subjecting to penalties banks failing to redeem their circulation in specie suspended. Till Mar. 1, 1865.

2. The twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first and thirty-second sections of chapter fifty-eighth of the Code of Virginia, second edition, and the several statutory provisions incorporated therein, are hereby repealed. Laws repealed.

CHAP. 70.—An ACT to authorize Suits to be brought in the county of Kanawha, Lewis, Doddridge, or Jackson, in cases heretofore cognizable in certain other counties.

Passed October 15, 1863.

Be it enacted by the Legislature of West Virginia:

Any action at law or suit in equity, which, according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, might be brought in the county of Boone, Clay, Fayette, Greenbrier, Logan, McDowell, Mercer, Monroe, Nicholas, Raleigh, and Wyoming, may be hereafter brought in the county of Kanawha; and any action or suit which might, according to the said chapter, be brought in the county of Pocahontas or Webster, may be hereafter brought in the county of Lewis; and any action or suit which might, according to said chapter, be brought in the county of Gilmer, may be hereafter brought in the county of Doddridge; and any action or suit which might, according to the said chapter, be brought in the county of Roane, may be be hereafter brought in the county of Jackson; but nothing herein contained shall be construed to effect any provision of law for the limitation of actions or suits. Suits heretofore cognizable in certain counties may be brought in certain other counties. Proviso.

CHAP. 71.—An ACT to legalize Books of Commmissioners of the Revenue not properly certified.

Passed October 15, 1863

Be it enacted by the Legislature of West Virginia:

All books of commissioners of the revenue examined and certified by any person as clerk or deputy clerk of the court of any county since the nineteenth day of June, eighteen hundred and sixty-three, shall Books certified by county clerk since June 19, '63,

Or by recorder before July 28, '63

be as valid as if so examined and certified by such person on or before the said nineteenth day of June, eighteen hundred and sixty-three; and all books of commissioners of the revenue examined and certified by the recorder of any county before the twenty-eighth day of July, eighteen hundred and sixty-three, shall be as valid as if examined and certified by such recorder on or since the said twenty-eighth day of July, eighteen hundred and sixty-three.

Made valid.

CHAP. 72.—An ACT authorizing Merchants' Licenses to be transferred.

Passed October 16, 1863.

Be it enacted by the Legislature of West Virginia:

When a merchant removes, not without county, recorder to alter license.

1. When a person who has heretofore obtained a license, or paid a tax for a license, to sell goods or merchandise at one place or store, removes to another store or place in the county where such license was obtained, and wishes his license altered accordingly, the recorder of the county may authorize such alteration.

When a merchant sells out to another within county, recorder to transfer license.

2. When a person who has heretofore obtained a license, or paid a tax for a license, to sell goods or merchandise, and has sold his goods or merchandise to another person, and wishes to transfer his license to the person to whom he sold his goods or merchandise, the recorder of the county is authorized to make such alteration or transfer, provided the goods be sold in the county where the license was obtained.

CHAP. 73.—An ACT to alter the terms of the Circuit Courts and the Rules, in the First Circuit, after the year eighteen hundred and sixty-three.

Passed October 17, 1863.

Be it enacted by the Legislature of West Virginia:

Terms of Circuit Courts in first Circuit changed.

1. The commencement of the terms of the circuit courts in the several counties of the first circuit, after the thirty-first day of December, in the year eighteen hundred and sixty-three, instead of being as heretofore prescribed by law, shall be as follows: For the county of Ohio, on the first Tuesday of March, May, October and December; for the county of Marshall, on the first Tuesday of April, June, September and November; for the county of Hancock, on the third Tuesday of April, June, September and November; and for the county of Brooke, on the fourth Tuesday of April, the first Tuesday of July, and the fourth Tuesday of September and November.

Times of holding Rules in Clerks' offices of first Circuit changed.

2. After the end of the present year, rules shall be held in the clerks' offices of the said circuit courts, as follows, instead of at the times heretofore prescribed by law: For the counties of Ohio and Marshall, on the last Tuesday of every month; for the county of Hancock, on the second Tuesday of every month; and for the county of Brooke, on the third Tuesday of every month; and the said rules may continue three days.

3. Special terms may be appointed and held in any county of the said circuit pursuant to the twenty-ninth, thirty-first, thirty-second and thirty-third sections of chapter one hundred and fifty-eight of the Code of Virginia, second edition. Special terms provided for.

CHAP. 74.—An ACT to provide for the appointment of Collectors in Counties where there are no Sheriffs.

Passed October 19, 1863.

Be it enacted by the Legislature of West Virginia:

1. The auditor, with the approbation of the governor, may appoint a collector or collectors of the revenue in any county that has no sheriff, and shall allow him a reasonable compensation, to be agreed on before the service is commenced, which compensation shall not exceed twenty per centum on what may be collected and paid into the public treasury. Auditor to appoint collectors. Their compensation.

2. Such collector shall have a reasonable time allowed him by the auditor, and shall, before he acts, execute a bond approved by said auditor, conditioned that he will faithfully collect the revenue, levies, fines and fees in the county for which he is appointed, and account for and pay the same according to law. The said bond shall be filed in the auditor's office. Time allowed them, their duties and bond.

3. Any action or motion against said collector or his sureties, may be instituted or made at the instance of the auditor in the circuit court of Ohio county, or of the county wherein the seat of government may be, after thirty days notice in the case of such motion, or in the circuit court of the county in which he is appointed, by any party aggrieved. Suits against collectors or sureties. How and where instituted.

4. Every collector shall give information to the auditor of any violation of duty by any assessor of the revenue of his county. Collector to report delinquencies of assessors.

5. Such collector shall have the same power to collect, and appoint deputies to collect, taxes, levies, fines, or officer's fees, and distrain and sell therefor, and be charged with the same duties in respect thereto that the sheriff would have been charged with; and the deputy collectors shall have the same power and duties in relation thereto, and for the same length of time that the collector himself has; and defaults and misfeasances of the deputy collectors shall be as much a breach of the condition of the collector's bonds, and of the bonds of such deputies, as defaults of the deputies of a sheriff would have been a breach of the condition of the bond of the sheriff, and of the bonds his deputies. Collector to appoint deputies. Powers and duties of deputies. Defaults and misfeasances of same.

CHAP. 75.—An ACT to incorporate the Marion and Monongalia Navigation Company.

Passed October 19, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful to open books under the direction of George W. Jolliff, James O. Watson, John Kearsley, Jacob C. Beeson, and Names of corporators.

Ashel Harr, or any three of them, at Fairmont, in the county of Marion, and at Morgantown, in the county of Monongalia, under the direction of Henry Dering, David H. Chadwick, Alfred Yeager, Samuel Sears, and George M. Hagans, or any three of them, for receiving subscriptions in shares of twenty dollars each, to an amount not exceeding two hundred thousand dollars, to the capital stock of the Marion and Monongalia Navigation Company, for the purpose of improving the Monongahela river by slack water from the Pennsylvania line upwards to the town of Fairmont, in Marion county.

Value of shares.

Capital stock.

Object of company.

Company established on subscription of one thousand shares.

2. As soon as one thousand shares have been subscribed, the subscribers, their executors, administrators, representatives, and assigns shall be and are hereby incorporated into a company by the name and style of the Marion and Monongalia Navigation Company, with all the rights, privileges and immunities and subject to the responsibilities, of a body politic or corporation; and may make such by-laws, rules and regulations as they may deem necessary and advisable, not inconsistent with the constitution of the United States or this State.

Powers, &c. of company.

How governed.

3. The said company shall be governed by the provisions of the fifty-sixth, fifty-seventh, and sixty-first chapters of the Code of Virginia, second edition, so far as the same are applicable and not inconsistent with this act. At all general meetings and elections, each stockholder may, in person or by proxy, cast one vote for every share of stock owned by him.

How stockholders shall vote.

Certain towns, counties and companies authorized to subscribe.

4. The towns of Fairmont and Morgantown, and the counties of Marion and Monongalia, the Monongahela Navigation Company, and the Baltimore and Ohio Railroad Company, in their corporate capacities, are hereby authorized to subscribe to the stock of the Marion and Monongalia Navigation Company; and the said towns of Fairmont and Morgantown, and the counties of Marion and Monongalia, are hereby authorized to issue their bonds to obtain money for the payment of their stock, redeemable at a period not exceeding twenty years, and at a rate of interest not exceeding six per cent. per annum.

And the towns and counties to issue bonds for payment of subscription.

Company authorized to borrow money, and issue bonds for same.

5. Said company shall have power to borrow money from time to time, not exceeding in the aggregate the amount of their capital stock, to issue their bonds or other proper securities for the same, and to pledge their works and property by mortgage or deed of trust for the payment thereof and the interest accruing thereon.

When to commence operations.

And how to continue.

6. Said company may commence and place under contract a lock and dam whenever a sufficient amount of stock has been subscribed and secured to complete the same; and as additional stock is subscribed and secured sufficient to complete another lock and dam, the same shall be placed under contract, and thus continue from time to time till the whole work is completed.

When tolls may be collected.

Rate of same.

7. As soon as a lock and dam are completed and placed in working order, said company may receive tolls, to be regulated so as not to exceed per mile the rate of tolls collected by the Monongahela Navigation Company, on the said river, in the state of Pennsylyania; but

no tolls shall be collected on any craft or lumber going down said river from above the slack water not to return, until all the locks and dams are completed and in working order to Fairmont.

Exception as to collection of tolls.

CHAP. 76.—An ACT giving force and effect within this State to sundry provisions of the second edition of the Code and other laws of the State of Virginia.

Passed October 19, 1863.

Be it enacted by the Legislature of West Virginia:

1. Wherever the words "court of the county," or "county court," or "court of the county or corporation," or any other expression used to designate the court of a county or corporation, occur in any provision of the Code of Virginia, second edition, or in the laws of that State passed before the seventeenth day of April, eighteen hundred and sixty-one, or under the reorganized government thereof, the same shall be construed as if the circuit court of the county were thereby intended; and such provision, if not otherwise repugnant to the constitution of this State, or the acts of the Legislature thereof, shall be and continue in force as laws of this State; but no provision of the said Code or laws of Virginia which has been repealed shall be revived or continued in force by reason of anything herein contained.

County or corporation court construed to mean circuit court.

2. All the powers and duties conferred on or required of the clerks of county courts by any chapter or section of the said Code or laws, and not by the constitution or laws of this State conferred on or required of the recorders, justices or other officers or organizations thereof, are hereby, if they relate to the proper business of a court of justice, conferred on and required of the clerks of the circuit courts, and if they do not so relate, on the clerks of the boards of supervisors, subject to the same privileges, restrictions and penalties.

Functions of county clerk transferred to circuit and supervisors' clerks.

3. The provisions of the said Code and laws relating to the fees which the state and county officers therein mentioned are thereby allowed to charge, recover or receive for acts done and services rendered, unless the same are repugnant to the constitution, or have been altered or repealed by the laws of this State, are hereby declared in force in this State uniil the same are altered or repealed by law; and the state, county, and township officers thereof are hereby respectively authorized to charge, recover and receive the like fees for similar acts done and services rendered by them in their official capacities.

Laws relating to fees confirmed.

CHAP. 77.—An ACT making an Appropriation to defray the expense of removing Sick and Wounded Soldiers.

Passed October 21, 1863.

Be it enacted by the Legislature of West Virginia:

1. The sum of two thousand dollars is hereby appropriated out of the treasury of this State, to defray the expense of removing to their homes from the hospitals or battle-fields the sick and wounded sol-

$2,000 appropriated.

For transportation of disabled soldiers of the state.
In what case.

diers belonging to the military forces from West Virginia in the service of the United States, where the soldiers themselves, or their friends, are unable to pay the expense of such transportation.

And subject to disposal of Governor.

2. This appropriation shall be subject to the disposal of the governor of this State.

CHAP. 78.—An ACT defining, in part, the Powers and Duties of the several Counties of the State.

Passed October 21, 1863.

Be it enacted by the Legislature of West Virginia:

County a body politic and corporate.

1. Every county of the State is a body politic and corporate; and all the powers, duties, rights, privileges and immunities which appertained thereto on the nineteenth day of June, in the year one thousand eight hundred and sixty-three, and are not repugnant to any provision of the constitution, or inconsistent with this act, shall remain and continue until altered by law. All acts and proceedings of, concerning or against a county shall be in the name of "The supervisors of the county of———;" by which name it shall have perpetual succession, may sue and be sued, make and use a common seal, purchase and otherwise acquire, hold, sell and convey real and personal estate, make and execute contracts, and do all other necessary acts and things in relation to its property and all other concerns, and exercise and discharge such powers and duties as now are, or may hereafter be, conferred upon it, or legally required of it.

Style of proceedings concerning.

Powers of.

Property how conveyed to.

2. All real and personal estate heretofore conveyed, or which shall hereafter be conveyed, by any form of conveyance, to any county, or the inhabitants thereof, or to any person or persons for the use and benefit of such county or its inhabitants, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their corporate name.

Powers of exercised only by assessors.

3. The powers of a county, as a body politic and corporate, can be exercised only by the supervisors thereof, acting as a board, or by virtue of their delegation or appointment. All property owned on the said nineteenth day of June, or thereafter acquired, by any county, shall be and remain vested in the supervisors thereof, for the use of such county and its inhabitants. The supervisors shall, under such general regulations as may be from time to time prescribed by law, have the care and disposition of the property, and the superintendence and adminstration of all the internal affairs and fiscal concerns of their county not by law confided to any township therein.

Property vested in same.

Administrative powers of supervisors.

Suits concerning county,
Effect of judgment.

4. In all suits in which a county shall be a party, the proceedings shall be the same and the judgment therein shall have the same effect as in suits between individuals; but where the judgment is against a county in its corporate name, or against any county officer as such, and the same is payable from the county treasury, no execution shall issue thereon, except as hereinafter provided; but such judgment,

If against county.
No execution to issue.

unless an appeal be allowed therefrom by a competent tribunal, shall be payable and paid from the county treasury, in the same manner, and at the same time, as if it had been allowed and directed to be paid by the board of supervisors at the date of the rendition of such judgment; and if not so paid, the court which rendered final judgment may direct execution to issue as in other cases.

Unless on failure to pay judgment.

5. No suit shall be brought against a county, or against any officer thereof in his official capacity, upon a money demand or claim for damages, which, if valid, would be payable from the county treasury, unless the same be a legal order upon such treasury, until the demand or claim has been first presented to the board of supervisors for payment, and has been disallowed by them in whole or in part. If the board shall refuse or neglect to act upon any such demand or claim, duly and properly presented to them for allowance and payment, by the close of their first stated meeting after that at which the same is so presented, the claimant may institute a suit for the recovery of the same.

No suits to be brought against county

Till claim has been presented to and disallowed by supervisors; but may be instituted if supervisors do not act on claim.

6. In all suits and proceedings against a county, the service of process shall be by leaving a copy thereof with the clerk of the board of supervisors; but in case there be no clerk, then by leaving a copy with the president or any member of the board. When any suit or proceeding is instituted against a county, the clerk of the board shall immediately notify the prosecuting attorney for his county thereof; or if there be no clerk acting, the president of the board shall give such notice. On the trial of every action or suit in which a county is interested, the inhabitants thereof, if otherwise competent, may be witnesses and jurors.

Service of process.

Prosecuting attorney to be notified.

Inhabitants of county may be witnesses or jurors.

7. Every county shall, at its own expense, provide a suitable court-house, and a suitable and sufficient jail, together with convenient offices for the recorder and clerks of the circuit court and the board of supervisors thereof; and shall keep the same in constant and adequate repair, and supplied with the necessary furniture, books, stationery, fuel, and such other things as shall be necessary. The said offices shall be at the county seat, and shall be made fire-proof, or be furnished with sufficient fire-proof vaults or safes. The board may also provide other necessary offices and buildings; and may, by purchase, acquire so much land as may be requisite or desirable for county purposes, and may suitably inclose, improve or embellish the land so or otherwise acquired

County buildings, how provided.

Clerks' and recorders' offices.

Land for county purposes.

8. If it becomes necessary or desirable to remove the county seat of any county to any other place within the same, and such removal is deemed advisable by a majority of the board of supervisors of such county, and is approved by a majority of at least three-fifths of the voters thereof voting "for removal," and "against removal," at the next annual township elections for the said county, or at intermediate special elections appointed by said board to be held in each township thereof, not less than thirty days after such appointment, the land, with the buildings thereon theretofore used for county purposes, may

Removal of county seat.

Sale of lands and buildings.

be sold, and the proceeds applied, so far as may be necessary, to the acquisition of the necessary land at the place to which it has been determined to remove, and the erection of other buildings thereon. Such removal and the sale may be had, notwithstanding the land formerly occupied may have been donated or sold to the county for the purposes for which it has been used, unless the grant thereof contain an express clause to the effect that on the removal of the buildings or of the county seat, such land shall revert to the former owners or their heirs, in which case it shall so revert.

Purchase of others.

Reversion of donated lands.

County authorized to take stock in internal improvement companies.

Conditions.

9. Any county may subscribe to the capital stock of any joint stock company incorporated to construct a work of internal improvement, through, by or near such county, if a majority of the board of supervisors thereof are of opinion that such subscription is likely to be of general benefit to such county, and is otherwise advisable, and the proposed subscription is approved by a majority of at least three-fifths of the voters thereof voting "for subscription" and "against subscription," at the annual township election for the said county, or at intermediate special elections appointed by the said board to be held in each township thereof, not less than thirty days after such appointment. But no such subscription shall be for a sum greater than can be paid by a levy on the taxable property of the said county for five successive years, not exceeding twenty cents on the hundred dollars value thereof in any one year; nor shall any such subscription exceed in amount one sixth of the whole capital stock proposed to be raised, or be binding on the county, or be paid in whole or in part, until the residue of such stock is, in good faith, subscribed for by other counties and responsible persons or corporations. The stock so subscribed for shall vest in the county making the subscription, and the supervisors thereof may, from time to time, appoint a proxy to represent the same at all meetings of the stockholders, and all elections of officers of the said company, and an agent to collect the dividends on such stock, which shall be paid into the county treasury, and be exclusively applied to the payment of the debts or the diminution of the annual levy thereof.

But subscription limited.

Stock to vest in county.

Representation of same.

Dividends.

Roads may be transferred to county.

Conditions.

How same to be maintained.

10. Any turnpike or plank road company may, with the consent of three-fourths in interest of its stockholders, other than the State, and the consent of the Legislature if the State is a stockholder, transfer so much of its road and works as lies in any county to such county, if the board of supervisors thereof are willing to, and shall formally accept such transfer, upon condition that their county shall thereafter keep the portion of the road so transferred, and its bridges and other works, in such order as is or may be required by law. Upon the completion of such transfer, the board may elect and provide by ordinance, either to maintain such road and works by the imposition of reasonable tolls, or in the manner in which other county roads and bridges are or shall be worked and kept in repair.

Powers of county courts conferred on supervisors.

11. All the police and administrative powers of the former county courts, not vested in the township or municipal corporations, including the establishment, regulation, alteration and vacation of county roads, the restablishment and regulation of public landings, ferries and

mills, and the granting of ordinary and other licenses, are hereby vested in the boards of supervisors of the several counties of the State, and shall be exercised and administered by them under the laws relating thereto, not repugnant to the constitution or inconsistant with this act, which were in force on the said nineteenth day of June, until the same are altered or amended. If in the establishment of a road, ferry, landing or mill, or in any other proceeding of the said board, it is authorized by law and becomes necessary or desirable to procure land, and terms of purchase cannot be agreed upon, the board of supervisors, if it is required for a public purpose, or the parties interested, in all other cases, may apply to the circuit court of the county wherein such land or the greater part thereof is situated, to appoint commissioners according to the provisions of the sixth section of the fifty-sixth chapter of the Code of Virginia, second edition, or of the seventeenth section of the same chapter, unless commissioners have been previously appointed under the provisions of the latter. In either case the subsequent proceedings shall be conformed to the directions contained in the said chapter so far as applicable, and the words "court," or "county court," shall be construed to mean the circuit court to which such application shall be made.

How exercised.

Procurement of lands for public purposes.

In case of disagreement upon terms of purchase.

Appraisers to be appointed and how.

Their proceedings, how regulated.

12. The supervisors of a county, upon the petition of twenty voters resident in any township thereof, or upon the application of a township meeting held therein, and not otherwise, shall have power to alter the boundaries of such township if they shall deem it advisable; but no such alteration shall take effect until the same is approved and ratified by a majority of the voters of each township interested, assembled in an annual or special meeting thereof and upon the like petition or application from each township to be affected thereby, and not otherwise, the supervisors of the county may erect a new township out of the territory of one or more townships, if they shall deem it advisable, to take effect only when approved and ratified as aforesaid. In the event of the alteration of the boundaries of any township by the erection of a new township, or otherwise, the surveyor of the county shall make two correct maps or plats of the township affected thereby, on which the new lines shall be plainly delineated, and duplicate specific descriptions of such lines; one of each of which he shall transmit to the secretary of the state and deposit the others in the recorder's office of his county. Copies of such maps or plats and descriptions, and of the original maps or plats and descriptions, of the several counties and townships of the State, certified by the secretary of the state or the recorder of the proper county, shall be received as evidence of their contents in all the courts of the State. The surveyor's fees and charges for his services herein shall be audited by the board of supervisors, in like manner as other claims, and be paid from the county treasury. The supervisors shall also, upon the like petition or application, have power to change the place for holding the meetings, and the place or places for holding elections in the several townships of their county, and to alter the name of a township, if they deem such change or alteration advisable; and it shall be the

Alteration of township lines.

Erection of new townships.

Maps to be m by surveyors.

How disposed of.

Certified copies of same to be evidence.

Surveyors' fees.

Change of places for holding meetings and elections;

And of names of townships.

Sec'y of the state to be notified.

duty of their clerk, as soon as practicable after any such change or alteration is made, to notify the secretary of the state thereof.

Removal of officers.

13. All county officers whose election is provided for by the constitution or by law, and the incumbents of all county offices hereafter created, may be removed from office for cause, by the board of supervisors of their county, excepting the sheriff, the prosecuting attorney, and the clerk of the circuit court, who may be removed for cause by the said court. Misconduct in office, habitual or wilful neglect of duty, manifest incompetence for its proper discharge, removal from the county, conviction of any offense punishable by imprisonment or involving a violation of an official oath, omission or refusal to take the oath of office, or to execute and deliver, or to renew, when required, an official bond within the time prescribed, habitual intemperance and grossly immoral conduct, shall be deemed sufficient causes of removal; but no removal shall be made by the board of supervisors unless voted for by two-thirds of the whole number elected, nor then if the assigned cause is misconduct in office or neglect of duty, until an opportunity has been afforded to the incumbent to make his defense before the board, or before a committee thereof appointed to investigate the charge or charges against him, who shall report all the facts of the case to the board.

Causes for removal.

Proviso.

Bounties for destruction of noxious animals and weeds.

14. The board of supervisors of every county shall have power to offer and pay suitable bounties and compensation for the destruction of noxious animals and weeds within their county, and by ordinance or resolution to require or direct the abatement or removal of all nuisances, dangerous or deleterious to the health of any of the inhabitants of their county. They shall also have power to take such measures to prevent the spread of contagious or infectious diseases within their county as are usual in such cases. To prevent injury from rabid animals or animals suffering from contagious or infectious diseases, they may, in like manner, direct such animals to be removed to or confined in an appointed place, or to be put to death and their carcasses properly buried or destroyed.

Removal of nuisances.

Precautions against contagious diseases.

And certain animals.

Supervisors authorized to impose tax on dogs.

15. To prevent the destruction or injury of sheep by dogs, the board of supervisors may require every owner of a dog or dogs kept within their county to take out license for keeping the same therein, and to pay such fee therefor, as they may from time to time ordain; and the owner or occupier of any house, lot, or farm about or upon which any dog or dogs may be kept or permitted to remain, shall be deemed for the purposes of this act the owner of such dog or dogs. When the board of supervisors shall have determined to require license from the owner of dogs within their county, it shall be the duty of the assessor of such county, under such regulations as the board may prescribe, to list all dogs in his county, and make return of such list at such time as the board may designate; which list shall have the names of the owners arranged in alphabetical order. If any person shall conceal his dog or send him away, to avoid listing, he shall pay a fine of five dollars, recoverable with costs before any justice. Every person when called upon by the assessor authorized to list as aforesaid,

Who is 'owner' of a dog.

Assessor to list dogs.

Penalty for concealment of dogs.

Owners of dogs to give information under oath.

shall disclose on oath the number of dogs owned by him, or kept or permitted to remain about any house or upon any lot or farm in his occupancy or under his control; and such oath shall be administered by the assessor. When the list aforesaid is completed and returned, the clerk of the board of supervisors shall thereupon cause notice to be posted in at least three public places in each township, requiring the owners of dogs within the county to procure license for keeping the same, within thirty days of the date of such notice; and when the said thirty days have expired, the clerk of the board of supervisors shall make out lists containing the names of all persons failing to take out license agreeably to such notice; which lists he shall deliver to the constables of the several townships, who shall thereupon search out and kill every dog for which license has not been taken out. Any person who shall conceal a dog to prevent his being killed by the constable shall pay a fine of five dollars. Constables shall receive fifty cents for every dog they shall kill under the provisions of this act. The license fees shall be paid to the county, and shall constitute a fund out of which shall be paid to the owner of any sheep injured or destroyed by dogs the value of those so destroyed or compensation for such injury, on his producing to the clerk of the board of supervisors an appraisement by two disinterested freeholders of the county, they being first duly sworn for the purpose, of the value of the sheep destroyed or the injury done, and their certificate of their belief that such destruction or injury was caused by dogs; also the constable's fees for killing dogs not licensed. If the fund prove insufficient, or more than sufficient, to pay the orders drawn against it in any one fiscal year, the license fee for the next year shall be increased or diminished accordingly, as the board may direct; but in any year when the fund shall not be sufficient to pay the full amount of the orders drawn against it, persons having legal claims for the injury or destruction of sheep against the fund for such year shall receive a share thereof in proportion to the loss or injury each has sustained. All dogs that are known to worry or kill sheep may be shot, or otherwise put to death, by any officer or resident of the county.

Assessor's list to whom returned.

Notice to owners to procure license.

Lists of those failing so to do.

Delivered to constables; who to kill dogs not licensed.

Penalty for concealment of dogs.

Constable's fees.

License fund to make restitution for loss of sheep by dogs.

How loss ascertained.

Constables fees paid from fund.

Regulation of license.

Where fund insufficient, claims paid PRO RATA.

By whom sheep dogs may be killed.

CHAP. 79.—An ACT authorizing the Council of the town of Parkersburg to turn Pond Run into the Ohio River without the coroporate limits of the said town.

Passed October 21, 1863.

Be it enacted by the Legislature of West Virginia:

1. The council of the town of Parkersburg are hereby authorized and empowerd to cause the channel or bed of Pond Run, in the county of Wood, to be so changed as to discharge the water thereof into the Ohio river, at such point or place, without the present corporate limits of the said town, as they shall determine, and for that purpose to cause to be constructed such dams, embankments, canals and aqueducts as they may deem expedient.

Parkersburg council authorized to turn Pond Run into the Ohio river.

And to construct necessary works.

Arbitration respecting lands in case of disagreement.

2. If the council of the said town cannot agree on the terms of purchase with those entitled to lands wanted for the purposes of this act, five disinterested freeholders shall be appointed by the circuit court of the said county, any three of whom may act, for the purpose of ascertaining a just compensation for such lands.

Notice to be given of appointm't of arbitrators.

3. Where it is intended to apply for such appointment, ten days previous notice thereof shall be served on the tenant of the freehold, or his guardian or committee. But if there be no such tenant, guardian or committee within the said county, the notice, instead of being thus served, may be published once a week for four weeks in some newspaper published in the said county, and posted at the door of the court house thereof.

Appointm't and meetings of the same.

4. Upon its appearing that notice has been so given, the said court shall appoint such commissioners, and in the order appointing them shall designate the day for them to meet. Any one or more of them attending on the land may adjourn from time to time until the business shall be finished.

Proceedings conformed to sections 9, 10, 11, 12, 13, 14, 16 and 29 of chapter 56 of the Code. With certain construction of the same.

5. All other proceedings necessary in the premises shall be conformed to and in accordance with the provisions, so far as applicable, of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth and twenty-ninth sections of chapter fifty-six of the Code of Virginia, second edition, substituting for the words "court of the county or corporation," wherever they occur in the said sections, the words "circuit court of the county of Wood." And the said council is hereby further authorized and empowered to enter upon any convenient lands for the purpose of obtaining therefrom wood, stone, gravel and earth to be used in the construction of the works mentioned in the first section of this act, under and subject to the provisions, so far as applicable, of the twenty-seventh section of the said chapter of the said Code.

Additional authority of council

Subject to sec. 27 of chapter 56 of the Code.

CHAP. 80.—An ACT fixing the Compensation of certain Officers and Clerks.

Passed October 22, 1863.

Be it enacted by the Legislature of West Virginia:

Att'y general $1,000.

1. The attorney general shall be paid the annual salary of one thousand dollars.

Adj't general $1,200.

The adjutant general shall be paid the annual salary of twelve hundred dollars.

Vaccine ag't—$100.

The agent of the state for the distribution of vaccine matter shall be paid one hundred dollars annually for his services.

Adj't general's clerk, $600. Auditor's clerk $600.

The clerk in the adjutant general's office shall be paid six hundred dollars annually; and the clerk in the auditor's office shall be paid six hundred dollars annually.

Treasurer's clerk $200.

And there shall be allowed for the services of a clerk in the treasurer's office a contingent fund of two hundred dollars.

The compensation mentioned shall be paid quarterly from the treasury, and the several officers shall discharge their several duties as the law prescribes. Paid quarterly.

2. All acts coming within the purview of this act are hereby repealed. Law repealed.

CHAP. 81.—An ACT concerning motions against Officers and their Deputies.

Passed October 23, 1863.

Be it enacted by the Legislature of West Virginia:

1. If any officer or his deputy shall make such return upon any order, warrant or process, as entitles any person to recover money from such officer by action, the court to which, or to the clerk's office of which such return is made, may, on a motion on behalf of such person, give judgment against such officer and his sureties, and against his and their personal representatives, for so much principal and interest as would at the time such return ought to have been made be recoverable by such action, with lawful interest thereon from that time until payment; and such damages in addition thereto, not exceeding ten per centum per annum, from that time till payment, as the court may deem proper. Where such return is by a deputy, there may also be a like motion and judgment against such deputy and his sureties, and against his and their personal representatives. Motions against officers. Amount recoverable.

2. The fortieth section of chapter forty-nine of the Code of Virginia, second edition, is hereby repealed.

CHAP. 82.—An ACT to prescribe how notice shall be given of applications to the Legislature for Special Acts concerning Banks of Circulation or Internal Improvement Companies.

Passed October 24, 1863.

Be it enacted by the Legislature of West Virginia:

1. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the same, shall be passed, unless public notice of the intended application for such act be given by posting the same, at least four weeks before the application is presented to the legislature, at the front door of the court house of the county where the principal office or place of business of the corporation is to be kept; and also by advertisement for four weeks successively in some newspaper, if there be any, in such county; or if there be no newspaper printed in the county, then in some newspaper printed at the seat of government. The notice shall show the names and residence of the applicants, and the nature of the act to be applied for; and with every such application there shall be submitted to the legislature proper evidence, by affidavit or otherwise, that the regulations prescribed by this act have been observed. Notice of applications for special acts.

2. This act shall be held to apply only to such applications as shall be hereafter presented. This act not retroactive.

CHAP. 83.—An ACT providing for the formation of Corporations, and regulating the same.

Passed October 26, 1863.

Be it enacted by the Legislature of West Virginia:

What corporations may be formed under this act.

1. Corporations may be formed under this act:—

I. For manufacturing, mining or insuring;

II. For savings institutions, savings banks, or banks exclusively of discount and deposit;

III. For constructing lines of magnetic telegraph, and carrying on the business properly pertaining to telegraph companies;

IV. For establishing hotels, springs companies, gas works, water works, cemeteries, or building associations, and transacting the business properly pertaining thereto;

V. For universities, colleges, academies, seminaries, schools or institutes, for the purpose of teaching any branch or branches of useful information or learning, or promoting religion, morality, military science and discipline, or the diffusion of knowledge; including library companies and literary and scientific associations;

VI. For benevolent associations, orphan, blind and lunatic asylums, and hospitals;

VII. For gymnastic associations;

VIII. And for any other purpose or business useful to the public, for which a firm or co-partnership may be lawfully formed in this state.

What corporations not to be formed under this act.

1. But this act shall not be construed to authorize the incorporation of a bank of circulation, or of a company for the construction of any work of internal improvement, or of any church or religious denomination, or of any company, the object, or one of the objects of which may be to purchase lands and re-sell the same for profit.

Land speculations.

Amount or value of each share.

3. The capital of every corporation formed under this act shall be divided, as may be agreed upon by the persons desiring to be incorporated, into shares of ten dollars each, or some multiple of that sum, or into shares of twenty-five dollars each.

Maximum capital.

4. The capital of a corporation formed under this act shall not exceed one million dollars.

Who may be incorporated,

And how charter obtained.

Corporators' agreement.

5. Any number of persons not less than five, desiring to become a corporation for any purpose or business designated in the first section, shall sign an agreement to the following effect:

"The undersigned agree to become a corporation by the name of (here insert the name by which it is intended the corporation shall be known,) for the purpose of (here describe fully and particularly the purpose for which the corporation is to be formed, and the kind of business intended to be carried on by it,) which corporation shall keep its principal office or place of business at———,in the county of———, and is to expire on the——day of——, eighteen hundred and——. And for the purpose of forming the said corporation, we have subscribed the sum of——dollars to the capital thereof, and have

paid in, on said subscriptions, the sum of——dollars; and desire the privilege of increasing the said capital, by sales of additional shares from time to time, to——dollars in all. The capital so subscribed is divided into shares of——dollars, each, which are held by the undersigned, respectively, as follows, that is to say: by (here insert the full name of each corporator, with his place of residence, and the number of shares held by him,) and the capital to be hereafter sold is to be divided into shares of the like amount. Given under our hands, this——day of——, eighteen hundred and——."

6. No corporation to be formed under this act shall be allowed to adopt or use any name, if there be another corporation in this state having the same name. Two corporators of same name not allowed.

7. No person shall be included as a corporator in any such agreement, by reason of any stock subscribed for by him, unless he has, in good faith, paid to the person who may have been appointed or agreed upon to receive the same for the intended corporation, at least ten per cent. of the par value of the said stock. Ten per cent. must be paid on every share.

8. The said agreement shall be acknowledged by the several corporators, before a justice, notary or judge; and such acknowledgments shall be certified by the officers before whom they are made. If any such acknowledgment be made before a justice, notary or judge of another state or country, proper evidence of the official character of the officer certifying the same, shall accompany his certificate. The affidavits of at least two of the corporators named in the agreement shall be anexed thereto, to the effect that the amount therein stated to be paid on the capital, has been in good faith paid in, for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation. Acknowledgment of corporators' agreement. Affidavit of corporators.

9. The agreement, with the acknowledgments and affidavits aforesaid, shall be delivered to the secretary of the state, who shall thereupon issue to the said corporators, his certificate, under the great seal of the state, to the following effect: Agreement, &c., to be delivered to the secretary of state.

"I, A. B, secretary of the state of West Virginia, hereby certify that an agreement, duly acknowledged, and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following: (here insert it.) Wherefore the corporators named in the said agreement and who have signed the same, are hereby declared to be, from this date, until the——day of——, eighteen hundred and——, a corporation by the name and for the purposes set forth in the said agreement. The charter or certificate of incorporation.

Given under my hand and the great seal of the said state, at——, this——day of——, eighteen hundred and——."

10. When a certificate of incorporation shall be issued by the secretary of the state pursuant to this act, the corporators named in the agreement recited therein, and who have signed the same, and their successors, associates and assigns, shall from the date of the said certificate until the time designated in the said agreement for the expi- Effect of such charter. Commencement and expiration of the corporation.

ration thereof, unless sooner dissolved according to law, be a corporation by the name and for the purposes and business therein specified. And the said certificate of incorporation shall be received in all courts and places as legal evidence of the existence of the corporation, as aforesaid.

Effect of charter as evidence.

Time the corporation is to continue limited.

11. No corporation under this act, except those mentioned in clauses five, six and seven of the first section, shall continue longer than twenty years.

Existing corporations may accept this act.

Proceedings for that purpose.

Report to the secretary of the state in such case.

12. The stockholders of any corporation now existing in this state, banks of circulation and companies incorporated for the construction of works of internal improvement excepted, may by resolution in general meeting, accept the provisions of this act. And thereupon a copy of the resolution shall be filed with the secretary of the state, together with a statement showing the name by which the corporation had theretofore been known, and the name, whether it be the same or a different one, by which it is intended it should be known thereafter; the business to be carried on; the place where such business is to be carried on and where the principal office is to be kept; the time when the corporation is to expire, subject to the limitation contained in the eleventh section of this act; the amount of the whole capital, the amount of the capital paid in; the amount to which it is intended to reserve the privilege of increasing the same; and the par value of each share; which copy and statement shall be certified by the president under his hand, and the common seal of the corporation. And the secretary of the state shall thereupon issue a certificate of incorporation, under his hand and the great seal of this state, reciting the said resolution and statement, and declaring the said corporation to be thereafter, until the time mentioned in the said statement for the expiration thereof, a corporation by the name which it is intended it should thereafter bear, and for the purposes and business therein set forth, unless sooner dissolved according to law. Certificates of incorporation issued pursuant to this section shall be received in all courts and places as legal evidence of the existence of the corporation as therein declared; and the said corporations shall no longer be under their former charters, but shall have all the rights, privileges and powers conferred by this act, and shall be subject to the liabilities, restrictions and regulations herein prescribed.

How authenticated.

New charter to be issued by the secretary.

Effect of new charter.

Change of name by a corporation.

Proceedings for that purpose.

Report to Secretary of the State.

Secretary's certificate of change of name.

13. If the stockholders of any corporation now existing in this state, excepting banks of circulation and companies incorporated for the construction of works of internal improvement; or the stockholders of any corporation which may be formed under this act, desire to change the name thereof, and shall pass in general meeting a resolution to that effect, stating the name by which it is intended the corporation should be thereafter known, there being no other corporation of the same name in this state, the president shall thereupon, under his signature and the common seal of the corporation, certify the said resolution to the secretary of the state, and the secretary shall issue, under his hand and the great seal of this state, a certificate re-

citing the said resolution, and declaring that the corporation is to be thereafter known by the new name so adopted by the stockholders; and the said certificate shall be received in all courts and places as legal evidence of the change of name therein specified. Effect thereof.

14. No debt, contract, right or liability previously existing, or any warrant, proceeding, motion, suit or process then pending, shall be affected or impaired by any thing that may be done under either of the last two sections. Existing rights or proceedings not affected.

15. The secretary of the state shall carefully preserve in his office the agreements specified in the fifth section of this act, with the acknowledgments and affidavits accompanying the same; and also the resolutions and statements mentioned in the twelfth and thirteenth sections. He shall cause to be accurately recorded in a well-bound book, to be used for that purpose exclusively, all certificates of incorporation and certificates of change of name he may issue pursuant to this act. If he neglect to record any such certificate, or if any error be discoverd in the record of any such certificate, he shall forfeit for every such neglect or default not less than ten nor more than fifty dollars. At the beginning of every regular session of the legislature, he shall deliver to the clerk of the House of Delegates accurate copies of all original certificates of incorporation, and certificates of change of name not before reported by him; and it shall be the duty of the said clerk to cause the same to be printed and bound with the acts of the session. If the said secretary or clerk fail herein, the party so in default shall forfeit not less than ten nor more than fifty dollars. The corporators shall cause certificates of incorporation, and certificates of change of name to be recorded in the recorder's office of the county in which the corporation therein named transacts its business, or in which its principal office is situated. Corporators' agreements, &c., where to be kept. Record of charters, &c. Penalty for failure to record correctly. Charters, &c., to be printed with the Acts of the Legislature. Penalty on Sec'y of the State and Clerk of the House. Record in recorder's office.

16. The secretary of the state may, at any time, on application of a party interested, issue under his hand and the great seal of this state, certified copies of any certificate of incorporation, or certificate of change of name, recorded in his office; and such copies, as evidence, shall have the same effect as the originals. The copies printed with the acts of the legislature, as prescribed by the preceding section, shall also, as evidence, have the same effect as the original certificates. Copies of charters, &c. Effect thereof as evidence. Effect of copies printed with the acts.

17. For issuing a certificate of incorporation or change of name, or a certified copy thereof, under the great seal of this state, as aforesaid, the secretary of the state may charge a fee of two dollars; and for recording the originals, as required by the fifteenth section, a fee of fifteen cents for every hundred words; which fees shall be paid at the time the service is rendered, by the person at whose instance it is done. Fees of the Sec'y of the State.

18. Every corporation for which a certificate of incorporation shall be issued in conformity with the ninth and twelfth sections of this act, shall, until the expiration or dissolution thereof, have perpetual suc- General powers of the corporation.

cession, and a common seal, which it may alter and renew at pleasure. It may sue and be sued, plead and be impleaded, answer and be answered, at law or in equity. It may in any case, and in any manner in which it would be lawful for a natural person so to do, but subject to the restrictions and regulations herein contained, contract and be contracted with; purchase, acquire, hold and use real and personal estate, stocks and securities, or any interest or right therein; and grant, convey, sell, assign, lease, mortgage, convey in trust, pledge, encumber, or otherwise dispose of the same. It may in general meeting of its stockholders make by-laws and regulations, not inconsistent with the laws of this state, for the government of its board of directors, officers and agents, the management of its property and business, and the due and orderly conducting of its affairs. And, generally, it may do for the purposes for which it is incorporated, and in the transaction of its proper business, but subject to the restrictions and regulations herein contained, whatever it would be lawful for a natural person to do.

Suits.

Contracts.

Acquisition, use and disposal of property.

By-laws.

General power to do unless restricted by law, whatever a natural person may do.

Restricted from speculating in land.

Confined to the business expressed in charter.

19. No such corporation shall employ its capital, money or effects, or otherwise engage in the purchase of real estate in order to resell the same for profit; or in transactions not proper for the purposes or business expressed in its certificate of incorporation. But mining or manufacturing companies may lay out a town or village, not to include over six hundred and forty acres, on lands owned by them, at or near their principal works, and sell lots therein.

Mining and manufacturing villages.

What amount of real estate the corporation may hold.

General limitation.

Exceptions.

20. It shall not be lawful for any corporation, formed or continued under this act, to hold more real estate than is proper for the purposes for which it is incorporated. And in no case shall any such corporation hold more than one hundred acres of land, except that a company for mining iron, lead, or copper ore, and manufacturing the same into metal, may hold ten thousand acres for every charcoal-blast furnace, and three thousand acres for every other furnace; other manufacturing companies, one thousand acres each; a company for mining coal for sale, three thousand acres; other mining companies, including salt and oil companies, two thousand acres each; and a springs company, fifteen hundred acres. No corporation subject to this act shall hold more than five acres of land in a city or incorporated town, except in the case specified in the nineteenth section.

Amount of land to be held in city or town.

Real estate and stocks taken for debt.

21. But nothing in this act contained shall prevent any corporation from taking stocks or real estate as a payment, in whole or in part, of any debt owing to it, or as security therefor; or from purchasing stocks and other property at any sale made for its own benefit; and disposing of the same at its own discretion. And if any corporation subject to this act lawfully acquire any share or shares of its own stock, it may either extinguish the same, or sell and transfer the same to a purchaser; but no vote shall be given on such stock while held by the corporation.

Corporations acquiring part of its stock, how to dispose thereof.

Such stock not be voted.

Scale of votes in stockholders' meeting.

22. In a meeting of the stockholders of a corporation subject to this act, and at every election of directors, every stockholder may, in per-

son or by proxy, give the following vote on whatever stock he may hold in the same right, that is to say, one vote for every share of stock not exceeding one hundred; and one vote for every four shares exceeding one hundred. Proxy.

23. Where a vote is offered at any meeting of stockholders upon stock transferred within sixty days before such meeting, such vote shall not be counted if any stockholder present object thereto, unless the stockholder, whose vote is so objected to has made or shall make oath that the stock on which such vote is to be given is held by him in good faith, and not by virtue of a transfer made with intent to obtain more votes than is allowed by law. Vote on stock transferred within sixty days.

24. No officer or director of a corporation subject to this act shall vote as the proxy of a stockholder. No officer or director to act as proxy.

25. An annual meeting of the stockholders of every corporation subject to this act shall be held at such time and place as may be prescribed by the by-laws, or if there be no such by-laws, then on the fourth Tuesday of January. A general meeting of the stockholders may be called at any time by the board of directors, or by any number of stockholders, holding together at least one-fifth of the capital. Notice of the annual or any other general meeting shall be given in such manner as the by-laws may direct, or if there be no such by-laws, by advertising the same once a week, for two weeks at least, in some newspaper of general circulation published near the principal office or place of business of the company. Annual meeting of stockholders to be held. Special meeting, how called. Notice of meetings of stockholders.

26. The number of stockholders, or amount of stock necessary to constitute a quorum at a meeting of stockholders, and the mode of transacting business at such meetings, may be prescribed by the by-laws. If there be no such by-law, a majority of the stock must be present, in person or by proxy, to constitute a meeting. But if a sufficient number do not attend at the time and place appointed, those who do attend may adjourn from time to time until a meeting is regularly constituted. Every meeting of stockholders may adjourn from time to time till its business is completed. Quorum at meeting of stockholders. Less than quorum may adjourn. Meeting may be continued by adjournments.

27. A list of the stockholders, showing the number of shares and votes to which each is entitled, shall, for one month before every annual meeting, be hung up in the most public room at the principal office or place of business of the corporation. List of stockholders to be hung up in office.

28. When any certificate of incorporation is issued under the ninth section of this act, the corporators named in the agreement recited therein, or a majority of them, shall appoint the time and place for holding a general meeting of the stockholders to elect a board of directors, make by-laws, and transact any other business which may lawfully be done by the said stockholders in general meeting. The time appointed for the meeting shall be not less than twenty-one nor more than ninety days from the date of the certificate, and at least two weeks notice of such meeting shall be given by advertisement in the manner prescribed in the twenty-fifth section. When new corporation formed, the corporators to call meeting of the stockholders. For what purpose. Time of such meeting. Notice thereof.

When a former corporation accepts this act.
The directors and officers may continue in office
Or a new election be held, &c.

29. When a certificate of incorporation is issued to an existing corporation, pursuant to the twelfth section, the board of directors and officers may continue to act in their respective capacities until the next annual meeting of the stockholders, and thereafter until their successors are elected or appointed and qualified; or a general meeting of stockholders may be called in the manner prescribed in the twenty-fifth section to elect a new board, or make such order in the matter as they may deem right.

Board of directors.
Their general power.
Number of directors.
Qualification of.
When to be elected.
Term of office.
How removed from office.
Vacancies, how filled.
Quorum of the board.
Filling up the numbers of the board when reduced.

30. For every corporation subject to this act there shall be a board of directors, who shall have power to do, or cause to be done, all things that are proper to be done by the corporation. The stockholders may in general meeting, by a by-law, prescribe the number of which the board shall consist; but unless a different number be so prescribed, there shall be five directors. They may also, by by-law, prescribe the qualifications of directors; but if it be not otherwise provided, every director must be a resident of this state and a stockholder. The directors shall be elected at the annual meeting of the stockholders, or as soon thereafter as practicable, and shall hold their offices until their successors are elected and qualified. The stockholders in general meeting may remove any director and fill the vacancy; but any vacancy not caused by such removal may be filled by the board. A majority of the board shall constitute a quorum, unless it be otherwise provided in the by-laws; and if the number of the board be reduced at any time so as to interrupt the proper and efficient management of the business of the corporation, a general meeting of the stockholders may be called to elect new directors, or to take such order in the premises as they may deem proper.

The president of the corporation.
His term of office.
To continue as director.
President PRO TEMPORE.

31. As soon as may be after their election, the board of directors shall choose one of their own body president of the corporation, who shall act as such till his successor is qualified, without ceasing, however, to be a member of the board. During the absence of the president the board may appoint a president *pro tempore*, who, for the time, shall discharge the official duties of the president.

Meetings of the board.

32. The board shall hold meetings at such time as they see fit or the president shall require. They may by resolution prescribe when and where their regular meetings shall be held, how special meetings shall be called, and what notice of their meetings shall be given.

Minutes of board of directors.
No director to vote if interested
Or remain at the board.
Yeas and nays.

33. They shall keep a record of all their resolutions and proceedings, which shall be verified by the signature of the president or president *pro tempore*. No member of the board shall vote on a question in which he is interested otherwise than as a stockholder, or be present at the board while the same is being considered; but if his retiring from the board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on their minutes, if any member at the time require it.

The board to appoint the officers and agents, and fix their pay.

34. The board of directors shall appoint such officers and agents of the corporation as they deem proper, and prescribe their compensa-

tion; but there shall be no compensation for services rendered by the president or any director, unless it be allowed by the stockholders. The officers and agents so appointed shall hold their places during the pleasure of the board; and if required by the board, or the by-laws, shall give bonds, payable to the corporation, in such penalties and with such conditions and security as the board may approve.

Except pay of president or a director.
Term of office of the officers.
Bonds.

35. The board of directors shall cause regular and correct books of account to be kept, and to be settled and balanced once at least every six months.

Accounts to be kept.
When to be balanced.

36. They shall make a report to the stockholders, at the annual meeting, of the condition of the corporation. The report shall show the property and funds belonging to the corporation, and the estimated value thereof; the debts due to it, distinguishing such as are believed to be good from those considered doubtful or hopeless; the debts and liabilities of the corporation; the amount of capital paid in; and the estimated surplus or deficiency, as the case may be. It shall also state the amount of dividends declared, and the losses incurred or profits accruing during the preceding year.

Report to the annual meeting of stockholders.

37. The property and funds, books, correspondence and papers of the corporation, in the possession or control of any officer or agent thereof, shall at all times be subject to the inspection of the board, or a committee thereof appointed for the purpose, or of any committee appointed for the purpose by a general meeting of the stockholders. The minutes of the resolutions and proceedings of the board shall, for thirty days before the annual meeting of the stockholders, be open to the inspection of any stockholder. They shall be produced when required by the stockholders at any general meeting.

Examination by the board of the affairs of the corporation.
Or by committee of the board or stockholders.
Inspection of the minutes of the board.
Production of the minutes at stockholders' meeting.

38. The board may from time to time declare dividends of so much of the net profits as they may deem it prudent to divide. If any stockholder be indebted to the corporation, his dividend, or so much thereof as may be necessary, may be applied to the payment of the debt, if the same be then due and payable.

Dividends.
Dividend may be retained if the stockholder is indebted.

39. If the board declare a dividend by which the capital of the corporation shall be diminished, all the members present who do not dissent therefrom and cause said dissent to be entered on the minutes of the resolutions and proceedings, shall be jointly and severally liable to the creditors of the corporation for the amount the capital may have been so diminished; and may be decreed against therefor on a bill in equity filed by any creditor; and moreover every stockholder who has received any such dividend shall be liable to the creditors for the amount of capital so received by him.

The capital not to be diminished by dividends.
Penalty on directors in such case.
Amount may be recovered from stockholders.

40. The stockholders may at any time in general meeting resolve to discontinue the business of the corporation, a majority of the capital stock being represented and voted in favor of such discontinuance, and may divide the funds and assets that may remain after paying all debts and liabilities thereof. Public notice of such resolution shall be immediately given by advertisement in some newspaper of general cir-

Resolution of stockholders to discontinue the corporation.
Proceedings for that purpose.

culation published near the principal office or place of business of the corporation, for three months at least before any dividend of the capital shall be made; and the said resolution shall be forthwith certified by the president under his hand and the common seal of the corporation to the secretary of the state, who shall preserve the same in his office, and deliver a copy to the clerk of the house of delegates to be printed and bound with the acts of the legislature. As soon as practicable after any such resolution is passed, the stockholders shall cause ample funds and assets to be set apart, either in the hands of trustees or otherwise, to secure the payment of all debts and liabilities of the corporation; and any creditor who supposes his claim not to be sufficiently secured thereby, whether such claim be then due or thereafter to become due, may on bill in chancery, and proper evidence in support thereof, obtain an injunction to prevent the distribution of the capital, and a decree against any stockholder for the amount of the capital received by him; and if necessary or proper in the case, the court may appoint a receiver to take charge of and administer the funds and assets of the said corporation.

Such resolution to be reported to secretary of the state.

And printed with the acts.

Funds set apart for creditors.

Creditor's remedy if his claim be insecure.

New corporation to organize in six months after charter obtained

41. If any corporation to which a certificate shall have been issued, under the ninth section of this act, be not organized by the election of a board of directors within six months after the date of such certificate; or if any corporation to which a certificate shall have been issued, under either the ninth or twelfth section, suspend its operations for two years continuously, it shall be thereby dissolved.

Any corporation suspended two years, is dissolved.

Board of directors to be controlled by the by-laws.

42. The board of directors in the exercise of all powers conferred by this act, shall be subject to such by-laws and regulations, not inconsistent with the constitution of this state, as the stockholders may pass from time to time in general meeting.

Corporators of new corporation may dispose of additional stock.

43. After a certificate of incorporation is issued, pursuant to the ninth section of this act, and before a board of directors are elected and qualified, additional shares of the capital of the corporation may be disposed of, so that the *maximum* capital be not exceeded, in such manner, on such terms, at such times and places, and under the superintendence of such persons as the corporators named in the agreement recited in the certificate of incorporation, or a majority of them, may order or direct.

Sales of additional stock by the board.

44. But when there is a board of directors for any corporation to which a certificate may have been issued, under either the ninth or twelfth section, the disposal of additional shares to increase the capital, shall be subject to the order and direction of the board for the time being, so that the *maximum* capital be not exceeded.

Stock not to be sold at less than par, to increase the capital. Stock not taken till first payment thereon is made.

45. In no case shall stock be sold or disposed of at less than par, in order to increase the capital; and no stock shall be regarded as taken, or the person subscribing therefor be considered entitled to the same, until the first instalment thereon be paid.

When an excess of stock is subscribed—how reduced to proper amount.

46. If more than the amount necessary to make up the *maximum* capital or the amount of stock to be disposed of, be at any time subscribed, the subscriptions at that time shall be reduced to the proper

amount by deducting the excess from the largest subscriptions, in such manner that no subscription shall be reduced while any one remains larger.

Instalments to be paid.

47. At least ten per cent. on the par value of every share shall be paid at the time of subscription; and the residue as required by the board of directors.

Remedy to enforce payment of money collected on subscriptions.

And instalments due by stockholders.

48. If any person who has received for any corporation subject to this act, any sum of money on any share or shares subscribed to the capital thereof, shall fail to account for and pay over the same as the board of directors may require, or if any stockholder fail to pay any instalment upon his shares when required by the board, the corporation may recover from the party so in default, the principal sum due, with interest thereon at the rate of ten per cent. per annum until paid, and costs, by warrant or action, according to the amount, or by motion on ten days notice in lieu of any action; or such shares may, after two weeks notice published in a newspaper of general circulation, printed near the principal office or place of business of the company, be sold at public auction for ready money, and be transferred to the purchaser or purchasers by such person as the board shall for that purpose appoint.

Sale of shares of delinquent stockholders.

Proceeds of such sale—how applied.

49. Out of the proceeds of such sale, there shall be paid the expenses thereof, and the money which ought to have been paid on the said shares, with interest thereon at the rate of ten per cent. per annum until paid, and any surplus shall be paid to the delinquent stockholder.

Remedy, if sale do not produce enough, &c.

50. If there be no sale for want of bidders, or if the sale do not produce sufficient to pay the expenses and the money which ought to have been paid, with interest as aforesaid, the corporation may recover from such stockholder whatever may remain unpaid, with interest at the rate mentioned in the preceding section, and costs, by warrant, action or motion as aforesaid.

Bond and security may be required for unpaid stock.

Penalty of the bond.

How secured.

Bond, to whom payable.

Condition thereof.

Remedy on such bond.

51. Any corporation subject to this act may, by by-law, require every stockholder, who shall not have paid up his stock in full, to give bond and security for the payment in such instalments, as the board of directors may require, of the residue remaining unpaid on his stock. And in such case, bond shall be given in a penalty equal to the whole par value of the stock, with one or more sureties to be approved by the board; or in lieu of personal security, it shall be secured by pledge of stocks or securities, or by deed of trust or mortgage on real estate. to the satisfaction of the board. Such bonds shall be payable to the corporation, and be conditioned for the payment at such times and in such instalments as the board of directors may require, of the residue due by such stockholder on the share or shares held by him. And if any stockholder who has given bond and security as aforesaid, fail to pay any instalment on his stock when thereto required by the board, the corporation may recover against all the obligors of the bond, or any one or more of them, the amount of such instalment, with interest thereon at the rate of ten per cent. per

annum till paid, and costs, by warrant, action or motion as aforesaid; or by sale or collection of the stocks and securities pledged, or the property conveyed in trust or mortgaged as aforesaid; or the shares held by such delinquent stockholder may be sold and transferred, and the proceeds applied, and the balance, if any, then remaining unpaid be recovered, in the manner specified in the preceding three sections. If the corporation proceed in any one of the modes prescribed in this section, it shall not bar or preclude it from afterwards resorting to any other mode of collecting the residue that may remain unpaid.

Shares of delinquent may be sold.

One remedy no bar to another.

Examination of stock, bonds, and securities.

New bond and securities may be required.

Remedy on such new bond.

52. When bonds are taken, according to the last section, for the unpaid residue of the stock, it shall be the duty of the board of directors to examine from time to time the said bonds and the securities pertaining thereto. And if they deem any such bond or security to be insufficient or doubtful, they shall require new bond and security in lieu thereof, and so, from time to time thereafter, whenever they shall find the bond and security held by the corporation against any stockholder to be doubtful or insufficient. And the corporation may enforce payment of the bonds and securities so subsequently taken, in like manner as the former bonds and securities.

Remedy against stockholder who fails to give bond or renew same.

53. If any stockholder fail to give bond or security, or to renew the same when thereto required as aforesaid, the whole residue remaining unpaid on his stock, with interest thereon at the rate of ten per cent. per annum until paid, and costs, may be recovered by the corporation by warrant, action, or motion, or by sale and transfer of the stock, in the manner prescribed in the forty-eighth, forty-ninth, and fiftieth sections of this act.

Shares declared personal property.

54. The shares of every corporation subject to this act shall be deemed personal estate, and as such shall pass to the personal representative or assignee of the stockholder, and be subject to execution.

The books of the corporation evidence of ownership.

55. The person in whose name shares may stand on the books of a corporation shall be deemed the owner thereof, so far as the corporation is concerned.

Transfer of shares where they are not fully paid.

Transfers where bond and security have been given for balance due on stock.

56. No shares shall be assigned without the consent of the board of directors, until the same be fully paid up, or security be given to the satisfaction of the board, for the residue remaining unpaid. And where bond and security have been given for the unpaid residue of the stock, no assignment shall affect the validity of such bond and security or the right of the corporation to resort thereto, for enforcing payment of the said unpaid residue, until the assignee shall have given bond and security, and the same shall be accepted as satisfactory by the board.

Transfer book.

How shares are transferable.

57. A transfer book shall be kept by the corporation, in which its shares may be assigned, and they shall be assignable only on the said book, under such regulations, if there be any, as may have been prescribed by the by-laws of the corporation.

Certificates of stock.

58. The corporation shall provide by its by-laws, for issuing, if demanded, to every person appearing on its books as owner of any

shares of stock fully paid up, a certificate therefor, under the corporate seal, to be signed by the president, and such other officer, if any, as the by-laws may direct.

Exchange of certificates where stock is transferred.

59. The person to whom any such certificate has been issued, may, upon returning the same to the corporation, assign, either in person or by attorney, upon the transfer book, the whole number of shares mentioned in the said certificate, or any less number. The certificate returned shall be canceled and retained by the corporation, which shall thereupon, if demanded, cause a new certificate or certificates to be issued to the proper persons.

Pledge of stock by delivery of certificate and power of attorney.

60. If any person shall for valuable consideration sell, pledge, or otherwise dispose of any shares belonging to him to another, and deliver to him the certificate for such shares, with a power of attorney, authorizing the transfer of the same on the books of the corporation, the title of the former, both at law and in equity, shall vest in the latter, so far as may be necessary to effect the sale, pledge, or other disposal of the said shares, not only as between the parties themselves, but also as against the creditors of, and subsequent purchasers from the former; but subject, nevertheless, to the provisions contained in the fifty-fifth section of this act.

Effect thereof.

Proceedings where certificate of stock is lost.

61. When a person to whom a certificate has been issued alleges it to have been lost, he shall file in the office of the corporation, first, an affidavit setting forth the time, place and circumstances of the loss, to the best of his knowledge and belief; second, proof of his having advertised the same in a newspaper of general circulation, published near the principal office of the corporation, once a week for four weeks, and, third, a bond to the corporation, with one or more sufficient securities, conditioned to indemnify the corporation and all persons against any loss in consequence of a new certificate being issued in lieu of the former. And thereupon the board of directors shall cause to be issued to him, a new certificate, or a duplicate of the certificate alleged to be lost.

Examination of corporation by order of legislature.

62. Every corporation subject to this act shall exhibit its books, papers, and property to such agents or committees as the Legislature may from time to time appoint to examine the same: and when required by the Legislature, shall report thereto a full, fair and detailed exhibit of its property, liabilities and condition, verified by the oath of the president and of the secretary or principal book-keeper.

Report to legislature.

No corporation to plead usury.

63. No corporation subject to this act shall interpose the defense of usury to any warrant, action, motion, proceeding, or suit at law or in chancery. Nor shall any bond, note, debt or contract of such corporation be impaired or adjudged invalid by reason of any thing in the laws prohibiting usury.

Corporate contracts not impaired by reason of usury.

Expiration or dissolution of corporation. How its property disposed of in such case.

64. When any such corporation shall expire or be dissolved, or its corporation rights shall cease, its property and assets shall, under the order and direction of the board of directors then in office, or of such receiver as may be appointed for the purpose by the circuit court for

the county in which the principal office or place of business of the corporation is situated, or in which its property or some part thereof may lie, be subject to the payment of the debts and liabilities due by it, and the surplus to distribution among the stockholders, according to their respective interests. And such corporation may sue and be sued as before, and do all lawful acts for the purpose of collecting its debts, converting its property or assets into money, prosecuting its rights, enforcing its liabilities, and distributing its property and assets, or the proceeds thereof, among those entitled thereto.

It may still sue and be sued on pre-existing rights.

Service of process and notices on corporations.

65. It shall be sufficient service of any warrant, process or notice on a corporation subject to this act, if a copy thereof be delivered by a proper officer or person to the president of the corporation; or, in his absence, be delivered to any officer, director or agent of the corporation at its principal office or place of business; or if service cannot be made as aforesaid, the corporation may be proceeded against by order of publication.

Right to alter or amend charters reserved.

Effect of such alterations and amendments.

66. The right is reserved to the legislature to alter or amend by general laws, at its pleasure, this act or any certificate of incorporation issued under the same. But such alteration or amendment shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

CHAP. 84.—AN ACT to authorize the Clerk of the Supreme Court of Appeals to take orders of publication in vacation.

Passed October 26, 1863.

Be it enacted by the Legislature of West Virginia:

Order of publication in court of appeals.

In what cases to be issued.

Clerk in vacation may issue it.

What it shall contain.

1. When by the return of any officer, of process issued to answer any appeal or supersedeas now pending or which may be hereafter pending in the supreme court of appeals in this State, or when from affidavits filed with the clerk of said court, it shall appear that the appellee or defendant in any such appeal or supersedeas is a non-resident of this State, or that the names or places of residence of such parties are unknown, so that process cannot be served upon them, it shall be lawful for the clerk of said court in vacation, upon application, to take and issue, on the first Monday in any month, an order of publication against such absent or unknown parties, requiring them to appear on a certain day, to be designated in said order, then and there to answer the said appeal or supersedeas, and to have a rehearing of the whole matter therein contained.

How posted and published.

2. Such order of publication shall be entered upon the order book of the court by the clerk, and signed by him, and a certified copy of said order shall be inserted once a week for four successive weeks in some newspaper to be named therein; and a copy of said order shall be posted at the front door of the building in which said court is held;

and when it shall appear that said order of publication has been duly published and posted as aforesaid, the court may proceed to hear and decide such causes in the same manner as if the said parties had been personally served with process: provided, however, that the order of publication shall have been executed as aforesaid, at least thirty days before the day on which any such case may be called for hearing. Effect of the order.

3. Any unknown party or other defendant who was not served with process and did not appear in the cause, may have the same re-heard and any injustice in the proceedings corrected, within the time prescribed by the thirteenth section of chapter one hundred and seventy of the Code of Virginia, second edition. Right reserved to absent defendant.

CHAP. 85.—An ACT to provide for revising, collating and digesting into a Code the Statute Laws now in force in this State.

Passed October 27, 1863.

Be it enacted by the Legislature of West Virginia:

1. The contract made by Edward C. Bunker, James C. McGrew and Peter G. Van Winkle, a joint committee of this legislature, acting under the authority and in pursuance of a joint resolution thereof, for and on behalf of this State, with Daniel Lamb, and providing in substance that the said Daniel Lamb shall, without unnecessary or avoidable delay, revise, collate and digest into one Code, to be called the "Code of West Virginia," all the statute laws of a general nature now of force in this State, and shall prepare and report to the legislature such amendments and additional laws as he may deem necessary, with marginal notes of reference to the laws from which the different sections were compiled, and to the decisions of the court of appeals, explanatory thereof, and with a table of contents and index to the whole, and shall prepare the same for printing and superintend the printing thereof, including the correction of the proofs, which contract is subject to the conditions, directions and stipulations therein contained, for the sum of five thousand dollars, payable as therein covenanted and agreed, the same to be in full of all charges and expenses which may be incurred by the said Daniel Lamb, except as therein excepted, is hereby approved, ratified and confirmed. Names of committee and contractor. Provisions of contract recited. Contract confirmed.

2. The sum of five thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, to be paid to said Daniel Lamb, one thousand dollars on the passage of this act, the like sum on the first day of March and on the first day of August next, the like sum whenever the said Daniel Lamb shall make his concluding report to the legislature, and the residue upon the full performance of his said contract. Appropriation. How contractor to be paid.

CHAP. 86.—An ACT to incorporate the Wheeling Creek and Pennsylvania Turnpike Company.

Passed October 30, 1863.

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful to open books for receiving subscriptions to an amount not exceeding thirty thousand dollars, to be divided into Subscriptions to be taken.

For what purpose.

shares of fifty dollars each, for the purpose of constructing a graded turnpike road, from a point near Mrs. Lydia Cruger's, on the National Road, in Ohio county, and thence along the ravine or valley of Wheeling Creek, to a point on the line between the state of Pennsylvania and this State, so as to connect with a road which may be made in the said state of Pennsylvania. The books shall be opened at the storehouse of R. S. Hopkins, Elm Grove, Ohio county, under the direction of said Hopkins, Jacob Keller, Daniel Steenrod, Sherrard Clemens, R. S. Buchanan, F. Ravenscraft, Albert Davis, James Downey, Alexander Caldwell, Seth Ingraham, Joseph Sheppard, William McCreary, or any one or more of them, and at such other places and under the direction of such agents, as a majority of the above named commissioners may appoint.

Where books to be opened.

Names of commissioners.

Amount of subscription necessary to establish company.

2. When the sum of five thousand dollars shall have been subscribed, the subscribers, their executors, administrators, and assigns shall be incorporated into a company, by the name and style of the Wheeling Creek and Pennsylvania Turnpike Company, subject to the provisions of chapters fifty-six, fifty-seven, and sixty-one of the Code; but the said company shall have the privilege of making the said road or any part thereof with gravel, sand, clay or plank, as to them shall seem most expedient. Said road shall be opened not less than twenty feet or more than thirty feet in width. Its grade shall in no case exceed four degrees; and the rates of toll shall not exceed those authorized by law to be collected on the Fairmont and Wheeling turnpike road; but toll may be collected on that portion of said road, between Mrs. Lydia Cruger's and the Ellendale farm, now belonging to said Clemens, and upon each section of five miles as the same may be completed between said point and the line of Pennsylvania.

Style of company

How governed.

Width and grade of road.

Tolls.

CHAP. 87.—An ACT to dispense with the Indexes to the Journals of the Senate and House of Delegates, and with the Sketch of the Acts and Resolutions heretofore required by law.

Passed November 2, 1863.

Be it enacted by the Legislature of West Virginia:

Indexes.

So much of any laws heretofore in force as requires the clerk of the senate to prepare an index to the journal of the senate, and the clerk of the house of delegates to prepare an index to the journal of the house, and at the expiration of each session a sketch or synopsis of the several acts and joint resolutions passed during the session, is hereby repealed.

Sketch of acts.

CHAP. 88.—An ACT defining, in part, the powers and duties, and regulating the proceedings, of the Boards of Supervisors in the several Counties of the State.

Passed November 2, 1863.

Be it enacted by the Legislature of West Virginia:

Stated meetings.

1. The first stated meeting of the supervisors of every county shall be held at the hour of ten in the forenoon, on the twelfth day after

that on which the first township elections are held therein. Their stated meetings required by the constitution shall be held at the same hour on the twelfth day after the annual township and county elections respectively, and on the twentieth day of June and December in every year. The president of the board may call special meetings when he deems it necessary or advisable, and shall do so whenever requested, in writing, by one-third of the supervisors of his county, stating the object of such meetings. Of all special meetings, and of the day for holding the same, he shall give timely notice to the clerk of the board, who shall cause each supervisor of the county to be duly notified thereof. All stated and special meetings of the board may, by a majority of those present, be adjourned and continued from day to day until the business properly before them is completed. All meetings shall be held at the court-house of the county; but may on account of danger from infectious or contagious diseases, or any other cause rendering it unsafe or inconvenient to hold them there, be temporarily held at some other suitable and convenient place within the county.

Special meetings.

Adjournments.

Where meetings held.

2. The supervisors of each county, when assembled for the transaction of business, shall constitute a board, of which a majority of the whole number elected shall be a quorum. They shall sit with open doors, and all persons may attend their meetings. The vote upon any question, when any supervisor demand it, shall be by yeas and nays; and the clerk shall enter every such vote upon the journal. They may pass by-laws and resolutions for their own government, and ordinances and resolutions for the regulation of all matters committed to their charge or administration, not inconsistent with the laws of the State; but all regulations of a permanent character, or having a continuous operation, shall be in the form of ordinances, which shall commence as follows: "Be it ordained by the supervisors of the county of ———."

Manner of conducting business.

Quorum.

Resolutions and ordinances.

Style of enactment.

3. For every day a supervisor attends a meeting of the board, he shall be entitled to receive from the county treasury such sum, not exceeding two dollars, as the board shall from time to time determine, and the president an additional sum of one dollar; but neither shall receive pay for more than twenty-five days attendance during any one year. Each supervisor shall also be allowed six cents for every mile necessarily traveled by him in going to and returning from the place of meeting for any distance traveled beyond five miles from such place; but mileage shall be paid but once for a meeting adjourned from day to day, and no other compensation shall be made for time occupied in traveling.

Compensation of supervisors.

And of president.

4. At their meeting next after the first township election, at their stated meetings in June, annually, and whenever a vacancy may occur, the board shall elect one of their number to serve as president, and in case of his absence or disability to act shall appoint a temporary president. The president shall preside at all meetings of the board, and shall have a general supervision of the affairs and property of the

Officers of the board, and their duties.

President.

county. In case of his absence or disability to act, the board shall appoint a temporary president.

Clerk.

5. At the same times the board shall appoint a clerk; who shall attend all their meetings, keep a journal in which he shall record all their proceedings, and prepare such ordinances and resolutions as they may direct. At the close of every meeting, whether stated or special, he shall read from the journal the proceedings thereof, except in cases where the meeting is adjourned from day to day, in which case the journal may be read at the opening of the adjourned meeting, and in either case the journal, if necessary, shall be corrected on the motion of any supervisor, and when approved by the board shall be signed by the presiding supervisor and countersigned by the clerk. He shall file and preserve all accounts acted upon by the board, and other papers required by law to be filed in his office. He shall deliver to any one who may demand it a certified copy of any account on file in his office, on receiving from such person five cents for every hundred words contained in such copy, or for every number of words less than one hundred. The clerk shall transact such other business pertaining to the office of clerk of the board as is herein, or may be hereafter, required by law or the board of supervisors. In addition to such fees as may be allowed him by law or ordinance, he shall receive for his public services a sum not less than fifty nor more than six hundred dollars per year, according to the population and business of the county; which sum the board shall fix by ordinance and pay quarterly from the county treasury.

Clerk's fee.

His annual compensation.

Notices and publications.

6. All notices and publications of county matters and proceedings required by law or ordinance shall be prepared and signed by the clerk. He shall also prepare and sign as many copies thereof as may be necessary, and shall cause the same to be served upon the proper persons, or if personal service is not required, to be posted conspicuously in his office or at the door thereof, and at the place for holding the annual meetings in each township, by the sheriff of his county; who shall make due return of such service on the original notice; which shall remain with the clerk. The sheriff shall be allowed for every notice duly so served or posted, and return made thereof as aforesaid, a fee of fifty cents. The supervisors of any county may, by ordinance or resolution, direct the publication in one or more newspapers printed in their county, or if none is there printed, then in some other county of the State and having general circulation in their own, of such notices or class of notices as may be indicated in such ordinance or resolution; but such publication shall not dispense with the posting, as aforesaid, of such notices. The hour at which a special meeting of the supervisors will convene shall be inserted in the notice thereof, if their president so direct; but if no hour is inserted, it shall convene at the hour of ten in the forenoon.

Fee of sheriff.

Hour of special meetings.

Ordinances, how recorded.

7. All ordinances when finally passed shall be recorded by the clerk of the board in a well bound book, and attested by the president of the board; and copies thereof certified by the clerk shall be received as evidence of the contents of such ordinances in all the courts of the

Same as evidence.

State and before every justice thereof. All ordinances of a public nature shall be published by posting copies thereof, to be prepared and certified by the clerk, at the places and in like manner as notices are directed to be posted by the preceding section; and if the supervisors so direct, by inserting in one or more newspapers, in the manner therein directed; but such insertion shall not dispense with the posting of copies as aforesaid, and the omission of the posting or publication of an ordinance shall not effect the binding force or operation thereof. The books, records and accounts of the board of supervisors shall be deposited with the clerk of the board.

Publication of same.

Books, etc.

8. At the first township election the voters of each county shall elect a county treasurer, whose term of office shall be two years. He shall demand, collect and receive all monies and securities due to his county, and may sue for and recover the same for the use of the county. He shall at least once in every quarter of a year, counting from the twentieth day of June, settle with the sheriff or other collector of his county, and demand and receive from him the proceeds which shall be then collected of all taxes levied for the use of his county, and of all fines and other demands and claims thereof, previously placed in the hands of such officer for collection, to whom he shall give duplicate receipts for the sum or sums paid, one of which the sheriff or other collector shall deliver to the clerk. The compensation of the treasurer shall be fixed by the board of supervisors at a per centage on the amount of his receipts, which may be varied according to the character thereof, but shall in no case exceed five dollars on the hundred, and on collections and receipts from the sheriff or other collector of taxes shall not exceed three dollars on the hundred. He shall be the holder of all obligations and other securities for the payment of money, and of all money, belonging to his county, and shall safely keep the same, and deliver and pay out none except to the orders of the president of the board of supervisors, countersigned by the clerk. At the stated meeting of the board held first after the annual township election, he shall make full report of his cash receipts, of the county orders paid by him during the past year, and of the money, securities and other county property remaining in his hands.

County treasurer —his duties.

His compensation.

9. Every person having a claim or demand against the county shall file with the clerk thereof an account or statement of the same, fully setting forth the items, and where the claim or demand is for services for which no rate or compensation is fixed by law or ordinance, the number of days occupied in such services. The clerk shall present such account or statement to the board at their first meeting thereafter, who shall after examination and consideration of the same allow the whole or such part thereof as they may deem just, or disallow the whole. If any part is allowed, the clerk, upon request of the claimant and his execution of a proper receipt for the same, shall draw an order on the treasurer for the sum allowed, in the following form, or to the same effect:

Claims against county.

Form of order on county treasurer.

No. ——. ——— County, (with the date.)

The treasurer will pay to A. B., or order, the sum of——dollars and——cents, allowed by ordinance (or resolution) of the board of supervisors, passed on the——day of——, 18—— (or by law as the case may be.)

E. F., *Clerk.* C. D., *President.*

Payment of such order.

Which order the clerk shall countersign and present to the presiding supervisor; who, if the same is correct, shall affix his signature thereto, and the clerk shall deliver it to the payee or his order. Every order so signed and countersigned and endorsed by the payee, shall be paid by the treasurer whenever the same is presented to him, at a proper time and place, if there are funds in his hands applicable to its payment; but where money is directed by law or ordinance to be paid at fixed times or intervals, as in the case of officers entitled to an annual salary, payable quarterly, the claim need not be presented to the board, but the president and clerk of the board shall make and deliver to the party entitled thereto, an order on the treasurer for the payment thereof. The aggregate of county orders issued in any one fiscal year, in discharge of any one particular class of expenditures, shall not exceed the amount levied for that purpose in the same year, and the balance in and amount due the treasury at the beginning of the year, applicable thereto.

What claims may be paid without action of the board.

Amount of county orders limited

Collection of claims by county

10. Every person indebted to a county and desirous to discharge such indebtedness, shall, unless the claim against him has been previously placed in the hands of the sheriff or other officer for collection, procure from the clerk of such board duplicate statements of the items of such indebtedness, including interest and cost, if any has accrued or been incurred, and pay the amount to the county treasurer; who shall endorse a receipt for the amount paid on each of the said duplicates, one of which, so endorsed, shall be returned to the clerk by the person who paid the money, and the clerk shall write on the other, which such person shall retain, the words "duplicate returned," and sign his name thereto; without which endorsement, the treasurer's receipt shall not be deemed an acquittance for the amount, unless the treasurer shall report the payment thereof in his annual report. The clerk shall charge the treasurer with the amounts of all receipts so returned to him.

Payment to county treasury, —how made.

Accounts with sheriff.

11. The clerk shall keep all the accounts of the county in a suitable book or books, on which he shall charge the sheriff or other collector of taxes with the amount of the annual levies for the use of the county, and of all fines and other demands placed in his hands for collection for account thereof, and credit him only with the amount of the treasurer's receipts returned by him, as required by the eighth section, and with such allowances as may be made him, by the board for delinquents or other cause. The clerk shall also, on the said book or books, charge the county treasurer with the amount of all claims, demands, and securities placed in his hands for collection for account of the county, and with the amount of the sheriff's and other receipts returned to the clerk as herein required, and of all other payments to

With treasurer.

the treasurer which shall otherwise come to the knowledge of the clerk; and credit him with the amount of all orders drawn on him as aforesaid, and issued to the person entitled to the payment thereof, and quarterly with the per centage or commission allowed him by the board. The clerk shall also keep an accurate account of all obligations, securities, and other property placed in the hands of the treasurer for safe keeping or any purpose other than collection.

Lists of bonds, &c.

12. The presiding supervisor shall at least once in every quarter of a year, and any other supervisor may at any time during business hours, inspect and examine the account and other books of the clerk; and if he find errors therein, or omissions therefrom, shall report the same to the board; who shall thereupon take such action as the circumstances of the case may in their opinion require. At the stated meeting of the board first after the annual township election, or at an adjournment thereof, the board shall, either by themselves or a committee appointed for the purpose, who shall duly report to them, examine carefully the books of the clerk, and compare them with the tax books, the treasurer's receipts to the sheriff and others, and such other county books, documents and vouchers, as they may deem proper; all of which shall be produced to them for the purpose by the clerk or other officer having charge thereof. They shall also, in like manner, carefully inspect the annual report of the treasurer, and compare the same with his account on the books of the clerk, and with the orders paid by him, which he shall produce for the purpose; and if the said orders are properly endorsed, and the board is satisfied that his report is correct, they shall so enter upon their journal, and direct their clerk to furnish a duly certified copy of such entry to the treasurer; who, upon receipt thereof, shall, having first cancelled without defacing them, hand to the clerk the orders paid by him and allowed in his report, who shall carefully file the same in his office.

Examination of clerk's books

And treasurer's report.

13. At the stated meeting of the board of supervisors appointed to be held on the twentieth day of June in each year, on which day the fiscal year of the county shall begin, or at an adjournment thereof, they shall proceed to ascertain by reference to the books and papers in the office of the clerk of the board relating thereto, and otherwise, the amount due by the county and remaining unpaid of each class of expenditures, the amount of debt contracted and payable within the current fiscal year, and the amount required to meet the estimated expenditures of the same period, and shall thereupon levy so many cents on every hundred dollars value of the taxable property of their county as will cover the probable aggregate of liabilities and expenditures for that year, including a reasonable allowance for possible delinquencies; which shall be collected by the sheriff or other collector of taxes of their county at the same time and in the same manner as the state levies are collected, and the proceeds of such collections, and of the collection of all levies directed by law for county purposes, shall be by the officer charged with the collection of the same paid over to the treasurer of his county at least once in every quarter of a year, counting from the twentieth day of June; who shall, as above

County levy.

Collection of the levy.

prescribed, deliver duplicate receipts for every payment made to him, one of which receipts the sheriff shall without delay, file with the clerk.

Failure to lay levy.

If the board of supervisors of any county shall refuse or neglect to levy, as aforesaid, for any debt previously contracted and falling due within the current fiscal year, any party aggrieved, or likely to be aggrieved thereby, giving at least ten days notice of his intention so to do to the clerk of the board, may apply by petition to the circuit court of the county, or to the supreme court of appeals; and if a proper case is presented and proved, the court petitioned may, if it deems it a proper case for its interference, require the said supervisors to make such levy as the case requires, and may award costs as they shall deem proper.

Remedy of party aggrieved.

Enforcement of ordinances.

14. The supervisors of every county shall have power to enforce the observance of all ordinances legally passed by them in the exercise of their police and administrative powers, by the imposition of such reasonable penalty for any breach thereof as they may deem proper, not exceeding the sum of fifty dollars in any one case. Such penalties may be recovered, with costs, for the use of the county, before any court or justice having jurisdiction.

CHAP. 89.—An ACT relating to the Townships and Township Officers.

Passed November 2, 1863.

Be it enacted by the Legislature of West Virginia:

Powers of township.

1. Each township is a body corporate, and may sue and be sued by its corporate name before any court or justice before whom a person may sue or be sued under similar circumstances. It shall have power to purchase, to receive grants, devises, bequests and conveyances of, and to hold, real estate for the public use of its inhabitants, and to grant, convey and dispose of the same; and to make all contracts and agreements that may be necessary and convenient in the proper exercise of its corporate and administrative powers. Every grant, devise or conveyance of land within its limits, made in any manner for the use or benefit of its inhabitants, shall have the same effect as if made to it by its corporate name.

Authority of voters to make township regulations.

2. The voters of each township may, at any legal meeting where the same is in order, make all necsssary and proper by-laws and orders for the government of their meetings, and for the regulation of the affairs of their township committed to their administration, subject to such rules and limitations as may be prescribed by law; and may, in like manner, impose suitable penalties for the breach thereof, not exceeding, unless specially authorized, ten dollars in any one case, and sue for and recover the same before any court or justice having jurisdiction; but no such by-law or order having a future or continuous operation shall take effect until ten days after copies thereof have been posted at three of the most public places in the township. By-laws and orders so made and published shall be binding on all persons, coming into the township or owning property therein, to which

such by-law or order applies, as well as to the inhabitants thereof, and shall remain in force until altered or repealed.

Failure to hold annual township meeting.

3. If any township shall omit to hold its annual meeting and election at the time fixed by law, it shall be lawful for any five freeholders thereof, to appoint another day for holding such meeting and election, by posting notices of the time, place and object thereof at three of the most public places in such township, at least ten and not more than twenty days before the day so appointed. The voters of the township who assemble pursuant to such appointment shall have and may exercise, all the powers they would have had, and might have exercised, on the day fixed by law for holding such meeting and election.

Division of township owning real estate.

4. When a township possessed of real estate shall be divided into two or more townships, the supervisors of the several townships constituted by such division, shall meet as soon as may be after the first township meetings subsequently held in such townships, and when so met, shall have power to make such agreement concerning the disposition to be made of such township property, and the apportionment of the proceeds, as shall be equitable, and to take all measures and execute all conveyances, which may be necessary to carry such agreement into effect.

Alteration of the lines of such township.

5. When any such township shall be altered in its limits by the annexing of a part of its territory to another township or townships, the supervisors of the township from which territory shall be taken, and of the township or townships to which the same shall be annexed, shall, as soon as may be after such alteration, meet for the purpose and possess the powers provided in the last preceding section. But the provisions thereof and of this section shall not apply to any cemetery or burial ground the title to which is vested in the township; but the same shall belong to the township in which it may be situated, after a division shall have been made.

Proviso.

Division or alteration of township owning personal estate.

6. When a township possessed of or entitled to money, rights, credits, or other personal estate, shall be so divided or altered, such personal estate shall be apportioned equitably between the townships interested therein, by the supervisors of such townships, according to the amount of taxable property in the townships divided or altered, as the same existed immediately before such division or alteration, to be ascertained by the last assessment lists of such townships; and the supervisors shall meet for the purpose aforesaid, as soon as convenient after the first township meeting subsequently held in such townships. Debts owing by a township so subdivided, or altered, shall be apportioned in the same manner as the personal property of such township; and each township shall thereafter be charged with its share of such debts, according to such apportionment.

Debts of such township.

Meetings of supervisors of townships so altered or divided.

7. Whenever a meeting of the supervisors of two or more townships shall be required in order to carry into effect the provisions of the last three preceding sections, such meeting may be called by either of the said supervisors; but the supervisor calling the same shall give

at least five days notice to each of the other supervisors of the time and place of such meeting.

Township treasurer.

8. At the first township election, and at every annual township election, and whenever a vacancy is required to be filled, the voters of each township shall elect a township treasurer, whose powers, duties and compensation shall be such as are herein, or may be hereafter, prescribed by law. No person shall be eligible to office in any township who is not at the time of election a qualified voter thereof.

Supervisor.

9. The supervisor of each township shall be the chief executive officer thereof, and shall have the superintendence of all the affairs and property of his township, and shall see that all laws, ordinances, by-laws and orders made for the government thereof are duly and promptly executed by the proper officers; and when the journal of the proceedings of any township meeting has been read and approved, he shall sign the same. In case of repeated or continued neglect of duty, incompetence or misconduct in office, by any township officer, he shall report the facts of the case to the board of supervisors of his county, if such board have power to remove such officer, and if not, to the next annual or special meeting of the voters of his township. He shall preside at all township meetings and elections held within his township, and preserve order thereat, and do all such other acts pertaining to his office as are or may be prescribed by law. For every day on which he shall attend an annual, adjourned or special township meeting, unless there is an election on the same day, he shall be entitled to a fee of one dollar, to be paid from the township treasury.

Removal of officers.

Pay of supervisors.

Township clerk.

10. The clerk of each township shall have the care and custody of all the books and records thereof, and of all papers appertaining to or ordered to be deposited in his office, which he shall properly file and endorse. Copies of all such papers and records, and transcripts from the books of his office and from the township journal, certified by him to be true copies or transcripts, shall have the same effect as evidence in any court, or before any justice, as if the originals had been produced; and for making such copies and transcripts, he shall be paid by the person requiring them, such fees as are or may be allowed by law to the recorder of the county for similar services. He shall attend all meetings of the voters of his township, and shall keep a journal of their proceedings, entering therein at length every by-law and order passed or adopted. He shall read the journal of the proceedings of each day's meeting and have the same corrected, if it require it, and signed before the adjournment thereof, except where the meeting adjourns from day to day, in which case the journal may be read, corrected and signed at the opening of the adjourned meeting. Before entering on the discharge of the duties of his office, he shall give bond with security, payable to the state of West Virginia, in the penalty of one thousand dollars, or such sum as may be fixed by a majority of the voters of his township, voting on the subject at the annual meeting next preceding the commencement of his term of service, to be approved by the supervisor and treasurer of his township, (which approval they shall endorse on the bond,) and conditioned as

Certified copies of records, etc.

Clerk's fees.

Bond of clerk.

required by the constitution; which bond shall be filed in the office of the clerk of the board of supervisors of the county. In addition to all fees to which he is or may be entitled by law, he may be allowed by his township for his public services such sum, not more than three hundred dollars per year, as shall be fixed by the board of supervisors, to be paid out of the county treasury. He shall keep an office at some convenient place within his township, the rent whereof, if any, and the cost of all necessary books, stationery, and other suitable conveniences, shall be audited by the township committee, and paid from the township treasury.

Annual pay of clerk.

His office.

11. The clerk of each township shall keep all the accounts thereof in a suitable book or books, on which he shall charge the sheriff or other collector of taxes of his county, with the amount of the taxes directed by law or the order of an annual meeting of the voters thereof to be levied for the use of his township, and of all demands placed in the hands of such sheriff or collector for collection for account thereof, and credit such officer with the amount of the township treasurer's receipts returned by him and such allowances as may be made him by the proper authority for delinquents or other cause. The clerk shall also on the said book or books charge the treasurer of his township with the amount of all claims, demands, and securities placed in his hands for collection for account of his township, and with the amount of the sheriff's and other receipts issued by the treasurer and returned to the clerk, and of all other payments to such treasurer for account of the township, which shall come to the knowledge of the clerk, and credit the treasurer with the amount of all orders drawn upon him as hereinafter provided.

Duties of clerk respecting township accounts.

12. The treasurer of each township, before entering on the discharge of the duties of his office, shall give bond, with security to be approved by the supervisor and clerk of his township, (who shall endorse their approval thereon,) in the penalty of two thousand five hundred dollars, or such other sum as may be fixed by a majority of the voters of his township, voting on the subject at the annual meeting next preceding the commencement of his term of service. Such bond shall be made payable to the state of West Virginia, and conditioned as directed by the constitution; and when duly executed and approved, shall be filed in the office of the clerk of the board of supervisors of the county. The treasurer shall have the care and custody of all obligations and other securities for the payment of money, and of all money belonging to his township, and shall safely keep the same, and deliver or pay out none except to the orders of the supervisor of his township, countersigned by the clerk thereof. As compensation for his services, he shall be entitled to retain five dollars in the hundred of all receipts of money for the use of his township, except receipts from the sheriff or other collector of taxes, of which he shall retain only three dollars in the hundred.

Treasurer's bond

Treasurer's duties.

His compensation.

13. The treasurer shall demand, collect and receive all money, and securities for the payment of money, and all penalties due to his town-

His authority.

ship; and may sue for and recover the same in its corporate name or in his own name as treasurer thereof, but for its use, if the case so require. He shall at least once in every quarter of a year, counting from the twentieth day of June, demand and receive from the sheriff or other collector the taxes levied on the property of his township for the use thereof, the proceeds which shall then be collected of all such taxes and of all penalties and other demands and claims thereof previously placed in the hands of such officer for collection. To every person from whom he shall receive any money for the use of his township he shall give duplicate receipts, numbered in rotation, one of which such person shall hand to the clerk to be filed and preserved in his office; and the clerk shall write upon the other the words "duplicate returned," and sign his name thereto; without which the receipt retained by such person shall not be evidence of payment as against the township. The receipts of the treasurer shall be in the following form or to the same effect:

No. ——. Township of ———, in the county of ———,
[Date,] ——— —, ——.

Received from A. B. for the use of the said township —— dollars and —— cents, for which he is entitled to credit on the books of the clerk.

$ ——. C. D., *Treasurer.*

Claims against township.

14. Every person having a demand or claim against a township shall file with the clerk thereof, at least ten days before the next annual meeting, an account or statement, in writing, fully setting forth the items thereof, or if the same is for services for which no rate of compensation is fixed by law or township order, the number of days occupied in such service. All such demands and claims shall be accurately listed and numbered by the clerk, who shall number with corresponding numbers the accounts or statements so filed with him, and shall also prepare a list of all demands or claims not then payable, but which will be payable during the coming year. On the day of the annual meeting he shall lay such lists, accounts or statements, and vouchers, with any information relating thereto in his possession, before the township committee hereinafter provided for, who shall proceed to compare each account or statement with the vouchers therewith filed, and, so far as may be necessary, with the books and papers in charge of the clerk, and to allow the whole or such part of each demand or claim as they may think just and right, or to disallow the whole. For so much of each demand or claim so allowed as is then properly payable, the clerk shall within ten days prepare an order on the towship treasurer, payable to the order of the person entitled thereto, or his assigns, which he shall countersign and present to the supervisor, who shall attend at the office of the clerk on the tenth day for the purpose and sign the same, if it correspond with the allowance made by the township committee; but orders for demands or claims subsequently payable shall he prepared and signed when they are payable. All such orders shall at any time thereafter, on proper application therefor, be delivered by the clerk to the parties to whom the

same are made payable, on their signing suitable receipts for the amount of their respective demands or claims. Such orders shall be in the following form or to the same effect:

No. ——. Township of ———, in the county of ———,
[Date,] ——— —, ——.

The treasurer will pay to A. B., (or C. D., assignee of A. B.,) or order, the sum of —— dollars and —— cents, in full of claim No. —. as allowed by the township committee at the annual meeting of 18—.

$ ——. E. F., *Supervisor.*
G. H., *Clerk.*

And every such order, properly endorsed by the payee, shall be paid by the treasurer on presentation, if there are funds in his hands applicable to the purpose.

Claims disallowed.

15. Any person whose demand or claim against a township is disallowed in whole or in part by the township committee may again file the same, or his demand or claim for the part disallowed, with the clerk of such township, with such additional vouchers and proofs as he may deem proper. The clerk shall lay the same before the next township meeting, whether special or annual, and the meeting, after examination and consideration, shall allow the demandant or claimant such sum or further sum as they may think just and right, to be paid by an order on the treasurer in the usual form, or may refuse to make any allowance or further allowance. If the demandant or claimant be still dissatisfied he may then, but not previously, sue for the sum he demands or claims before any court or justice having jurisdiction. If the judgment is against the township, the supervisor thereof, with the assent of the clerk and treasurer, or either of them, may order an appeal to be taken on behalf of the township; but no appeal bond shall be required. If judgment on the appeal is given against the township, or no appeal be taken, the supervisor and clerk shall forthwith issue to the appellee or person entitled thereto an order on the treasurer of their township for the amount of the recovery.

Treasurer's annual statement.

16. It shall be the duty of the treasurer to lay before the township committee on the day of the annual meeting a statement, verified by his signature, of his receipts and expenditures up to that time, designating each credit by the number of the duplicate receipts given to the person who made the payment, and each item of his expenditures by the number of the township order on which the same was paid, and showing the balance due to the township remaining in his hands. He shall also at the end of the term for which he was elected lay before the said committee a similar statement, and in each case, also, a statement of the obligations and other securities and property in his hands for safe keeping or collection.

His final report.

Township committee.

17. At the opening of every annual meeting in each township there shall be appointed, by a majority of the voters present and voting thereon, a committee of five voters, being freeholders of the township, who shall be called the the township committee, and shall serve for one year, and shall have power to fill any vacancies which may oc-

cur in their number, a majority of whom shall be a quorum. Immediately upon their appointment, after discharging the duty required of them in a previous section of this act, they shall proceed to ascertain from the lists and account books of the clerk, the statements of the treasurer, and any other sources of information accessible to them, what amount it will be necessary to levy on the taxable property of the township to meet the necessary expenditures of the coming fiscal year, including the balance of all claims against their township over the money in or due to its treasury applicable to their payment then payable and unpaid, the amount of claims and appropriations payable during the next fiscal year, and the probable amount of the current and contingent expenses of the same period; which estimate they shall reduce to writing, distinguishing the different classes of expenditure, and present to the annual meeting on the same day if practicable, and if not, then on the day to which it shall be adjourned for the purpose. The meeting shall thereupon proceed to consider the report of the committee, and may, if good reasons therefor appear, correct their estimate, and by an order entered on their journal shall direct an amount sufficient to cover the estimate so reported or corrected, making due allowance for probable delinquencies and expenses of collection, to be included in the next annual levy on the taxable property of their township; a copy of which order the clerk, as soon as possible thereafter, shall cause to be served upon the assessor of the county or district in which such township is situated.

Township levy.

18. The township committee shall again assemble at the clerk's office on the twentieth day of June in the same year, and receive from the treasurer his report of his receipts and expenditures since the annual meeting, and by comparison with the account books of the clerk and otherwise, shall ascertain the balance due the township by the treasurer, and also the the amount of commission which he is entitled to retain. The outgoing clerk and treasurer, and those who have been elected their successors, shall attend at the same time and place, and the latter shall produce certificates of their due qualification, and thereupon the said committee, or a majority of them, shall, by an order in writing signed with their names, direct the outgoing clerk to deliver to his successor all the books, papers and other property appertaining to his office; and by a similar order direct the outgoing treasurer to deliver and pay over to his successor the obligations, securities and other papers and property in his posession, and the balance of money due to the township remaining in his hands.

Treasurer's report to committee.

Outgoing and incoming clerk and treasurer.

19. The voters of each township, at any legal annual meeting, or at a special meeting duly called for the purpose, if the votes in favor of the proposition are two-thirds of the whole number given, or equal in number to a majority of all the voters of the township, in addition to all taxes required by law to be levied on the property of their township, may levy taxes on such property for the following purposes, within the limits hereinafter specified:

Additional township levy.

For the better maintenance and improvement of the free schools established by law within their township, not more in any one year than five cents on every one hundred dollars of the taxable value of such property, according to the most recent legal assessment of the same; For free schools.

For procuring the necessary land and erecting school-houses and furnishing the same, not more in any one year than five cents on every one hundred dollars of such value; For school-houses, etc.

For the opening, repair and improvement of public roads and the building and repair of bridges on the same, not more in any one year than ten cents on every one hundred dollars of such value; For roads and bridges.

For purchasing the necessary land and erecting a township hall for holding meetings and elections and the accommodation of the township clerk and other officers, not more in any one year than five cents on every one hundred dollars of such value; Township buildings.

For purchasing the necessary land or lands and enclosing and embellishing the same for one or more cemeteries or burial grounds, not more in any one year than five cents on every one hundred dollars of such value.

But nothing in this section contained shall prevent the township making contracts for any of the above purposes, if the payments on account thereof are so arranged that the annual appropriation required to meet the same shall not exceed the amount by this section authorized to be raised by taxation for such purpose in any one year. Proviso.

CHAP. 90.—An ACT admitting the county of Jefferson into, and making the same part of, this State.

Passed November 2, 1863.

WHEREAS, by an act of the general assembly of the state of Virginia, entitled "An Act giving consent to the admission of certain counties into the new state of West Virginia, upon certain conditions," passed February fourth, eighteen hundred and sixty-three, it was, among other things, enacted that at the general election on the fourth Thursday of May, one thousand eight hundred and sixty-three, it should be lawful for the voters of the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes whether the counties of the said district should be annexed to and become part of the state of West Virginia, and the consent of the said general assembly was thereby given for the annexation to this State of such district, if a majority of the votes polled therein should so determine: provided, that this legislature should also consent and agree to the said annexation; after which all jurisdiction of the state of Virginia over the district so annexed should cease; Preamble. Act of General Assembly of Virginia.

And whereas, it was further provided by the said act that it should be the duty of the governor of the state of Virginia to ascertain and certify the result of the said vote as other elections are certified, and Francis H. Peirpoint, governor of the state of Virginia, did, on the Compliance with said act certified by the governor of Virginia.

fourteenth day of September, in the present year, after reciting that polls were opened in the said county of Jefferson, on Thursday, the twenty-eight day of May, eighteen hundred and sixty-three, on the question of annexation to the said new State, certify, under his hand and the less seal of the state of Virginia, that from the returns made to the executive department thereof, a very large majority of the votes cast at the said election were in favor of the said annexation of the said county of Jefferson to the state of West Virginia; therefore,

Be it enacted by the Legislature of West Virginia:

Jefferson county admitted.

1. The county of Jefferson, lately constituting part of the commonwealth of Virginia, is hereby admitted into and made part of this State; and shall constitute part of the second congressional district, of the tenth senatorial district, and of the tenth judicial circuit; and shall at the election herein provided for, and at every annual state election thereafter, choose two members of the house of delegates.

Added to 2d Congressional dist't, 10th Senatorial district, and 10th judicial circuit.

Delegates.

Election.

2. It shall be the duty of the governor, so soon as he shall have reason to believe that an election can be properly held in the said county, to issue his proclamation directing an election to be held on such day as he shall appoint, at the several places for holding elections therein, for the election of two delegates, an assessor, clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands, and recorder, and appointing three voters of the said county, any two of whom may act, and any one or more of whom may fill vacancies in their own body, who shall serve as superintendents of the said election.

Officers to be elected.

Superintendents of election.

3. The said superintendents shall, for every place of voting in the said county, appoint three commissioners, any two of whom may act, and a conductor, to superintend and conduct the election at the place for which they are appointed. They shall furnish the commissioners for each place of voting with the proper ballot-boxes, poll books and forms. But if at the time the polls should be opened at any place of voting there shall be present but one commissioner willing to act, he shall associate with himself as a commissioner some freeholder of the county then present; and if there be no commissioner present willing to act, any two freeholders of the county present, and willing to act, shall be commissioners.

Commissioners and conductor.

Authority of commissioners.

Manner of conducting election.

4. In all other respects the said election shall be conducted, and the result ascertained, certified and returned, according to the directions contained in clauses V, VI, VII, VIII, IX, X, XI, XII, XIII, XVII, XIX, XX, and XXI of an ordinance of the constitutional convention, entitled "An ordinance to provide for the organization of the state of West Virginia," passed February nineteenth, eighteen hundred and sixty-three. The secretary of the state shall prepare and forward in time to the superintendents to be appointed as aforesaid, poll books and the proper forms of oaths and returns, and three printed copies of the constitution as amended, for every place of voting in the said county; and the said superintendents shall make proper distribution of the same.

Blanks and copies of constitution to be furnished to and distributed by superintendents.

5. The terms of office of the persons elected at the election herein directed to be held, shall commence as soon thereafter as they are qualified as required by law; but if for more than one year, shall continue and be computed as if the same had begun on the first day of January last, and if for one year only, as if the same had begun on the first day of January next. Terms of office.

6. All officers acting within the said county by the authority of the laws of Virginia, and under the re-organized government thereof, at the time of the passage of this act, shall continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the state of West Virginia, until the officers elected or appointed under this or any other act of this legislature for the discharge of similar duties, are qualified. Officers incumbent.

7. The terms of the circuit court for the said county shall commence on the twenty-seventh day of April, June, October and December in every year. Terms of circuit court.

8. The governor shall also appoint one person for each magisterial district of the said county commissioners to divide the same into townships, under the provisions of an act entitled "An Act to provide for the division into townships of the several counties of the state," passed July thirty-first, eighteen hundred and sixty-three. Township commissioners.

CHAP. 91.—An ACT declaring the South Fork of Fishing Creek, in the county of Wetzel, a public highway.

Passed November 4, 1863.

Be it enacted by the Legislature of West Virginia:

The south fork of Fishing Creek, in the county of Wetzel, from Hay's Mills up to Aiden Ice's Mills, is hereby declared a public highway for the transportation of boats, lumber, or other material; but this act shall not be so construed as to prevent the owners of coal or other minerals from removing the same from the bed of said creek. South fork of Fishing Creek made a public highway. Proviso.

CHAP. 92.—An ACT to amend an Act providing for the sale of a certain lot of land held in trust for certain purposes in the town of Wellsburg, in the county of Brooke, passed March 15, 1850.

Passed November 4, 1863.

Be it enacted by the Legislature of West Virginia:

1. An act providing for the sale of a certain lot of land held in trust for certain purposes in the town of Wellsburg, in the county of Brooke, passed March fifteenth, eighteen hundred and fifty, is hereby amended by inserting the name of Narcissa Doddridge instead of Philip B. Doddridge, and by striking out of the first section the following words at the end thereof: "and require the removal of the vault and remains therein deposited, according to the object that may be sought in such application to the court;" and by striking out of the first section the word "superior," and the words "of law and chancery;" and by Act for sale of lot of land in Wellsburg containing family vault, amended.

Proceedings in court.

amending the second section so as to read as follows: "2. That any person or persons concerned in interest or convenience in regard to the situation or location of said lot of land and the use to which it is appropriated, may be made defendants to such bill or petition, and the same shall be proceeded in in the same manner prescribed by laws for bills exhibited by guardians for the sale of the real estate of their wards; and the proceeds of the sale, if such sale shall be decreed, shall, after discharging the expenses of the purchase of a lot in the Wellsburg cemetery, in which is interred the remains of the said Dr. Joseph Doddridge, and of removing the remains thereto, and of erecting thereon a monument, if any there be, be vested for and applied as a fund for the purpose of keeping in repair the said lot last aforesaid and the monument thereon, or to the use and benefit of the heirs or descendants of the original grantor, the said Joseph Doddridge, deceased, as the said court may deem best; but into whatever hands the proceeds, or the surplus of the proceeds of such sale may come or be placed, the said court shall require ample security that the same shall be faithfully applied in such manner as the said court may direct."

Application of proceeds of sale.

CHAP. 93.—An ACT in relation to Juries.

Passed November 4, 1863.

Be it enacted by the Legislature of West Virginia:

Certain sections of chapter 162 of Code amended.

1. The fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, and thirty-third sections of chapter one hundred and sixty-two of the Code of Virginia, second edition, shall be amended and re-enacted so as to read as follows:

Board of supervisors to make out jury lists.

"4. The board of supervisors of each county shall, as soon after this act goes into effect as may be, and thereafter at their stated meeting in December annually, prepare a list of such inhabitants of the county, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of sound judgment and free from legal exception, which list shall include at least twenty persons for every thousand inhabitants in such county; but in no case shall such list include a less number than fifty persons.

Number of persons to be included.

List to be kept by clerk of court.

"5. The list so prepared shall be delivered to the clerk of the circuit court, to be by him safely kept, subject only to the inspection of the court or of the recorder, as hereinafter prescribed; and the court may strike from such list the name of any person who has been convicted of any scandalous offence or been guilty of any gross immorality.

Names erased by the court.

Ballots—how prepared.

"6. At the time such list is made out, the board of supervisors shall also cause all the names upon the same to be fairly written, each on a separate paper or ballot; and shall fold or roll up the ballots so as to resemble each other as nearly as may be, and so that the name written thereon shall not be visible on the outside; and shall deposit the

ballots in a secure box to be prepared for the purpose, which shall be delivered to and safely kept by the clerk of the circuit court, and shall be opened only by order of the court or by the recorder, as hereinafter prescribed.

Box for the ballots.

Who may open same.

"7. All jurors required for the trial of cases in any circuit court, except cases of felony, shall be selected by drawing ballots from the said box in the manner prescribed in this act, and the persons whose names are written on the ballots so drawn, shall be returned to serve as jurors. Grand jurors shall be summoned as now provided by law.

Jurors to be drawn from box.

Grand jury summoned as heretofore.

"8. The clerk of every circuit court shall, at least twelve days before any term of such court at which a jury may be wanted, issue a writ of *venire facias* for twenty-eight jurors, and shall therein require the attendance of the jurors on the first day of the court, or such other day thereof as the said court shall order; but whenever, in the opinion of the circuit court of any county in the State, a greater number of jurors than twenty-eight is necessary for the dispatch of the business of said court, such opinion shall be entered of record, together with the number of jurors deemed necessary by said court; and thereafter it shall be the duty of the clerk of such court to issue a *venire facias* for the number of jurors so designated.

VENIRE for 28 jurors to be issued before each term

Court may order a larger number.

"9. At the same time such clerk shall issue a summons in the name of the State, requiring the recorder of the county to attend at the clerk's office of the circuit court of such county, on a day named in such summons, which shall be not less than seven nor more than ten days before the day on which the jurors are required, for the purpose of drawing the ballots for jurors.

Summons to the recorder.

"10. The writ of *venire facias* and summons shall be delivered to the sheriff or other officer who shall serve the summons on the recorder, and it shall be the duty of such recorder to attend on the day designated in the summons, at the clerk's office of the circuit court of the co and in the presence of the clerk of the circuit court, to cause the proper number of jurors to be drawn from the box, and a list thereof to be delivered to the officer serving the summons. And it sh: be the duty of such officer at least three days before the time when the jurors are required to attend, to summon each person who is drawn to attend the sitting of the court at the time and place mentioned in the writ, and make a due return thereof and of the summons aforesaid, at the opening of the court from which they issued. If, in pursuance of the eighth section of this act, more than twenty-eight jurors are required by the circuit court of any county, and shall have been summoned, it shall be the duty of the said court to divide by lot the said number of jurors equally into two classes of twenty-eight jurors each, which shall be denominated "class number one" and "class number two." And it shall be the duty of class number one to serve as jurors, to the exclusion and relief of class number two, from the first to the sixth day of the term inclusive; at which time it shall be the duty of the jurors of class number two to attend and serve as jurors, except in those cases where any of the jurors of class num-

Proceedings to draw the number ordered.

Recorder to draw the jurors.

Summoning the persons drawn.

When jurors drawn divided into two classes.

How the two classes to serve.

ber one are actually sworn in a cause, to the exclusion and relief of class number one, from the seventh to the twelfth day of the term inclusive. And the said classes, number one and number two, shall so on alternately serve as jurors until the end of the term to which they may have been summoned as jurors.

How the drawing conducted.

"11. When jurors are to be drawn as aforesaid, the ballots in the jury box shall be shaken and mixed together, and the recorder shall openly draw therefrom as many ballots (without inspecting the names written on any until the proper number is drawn) as shall be equal to the number of jurors required; and if any person whose name is so drawn, is exempted by law, or is unable by reason of sickness, absence from home, or other cause, to attend as a juror, his name shall be returned into the box, or if his name has been struck from the jury list, the ballot shall be destroyed and another shall be drawn in his stead.

Exempts.

Names drawn to be noted on the ballots

And jury list.

"12. When any person is drawn and returned to serve as aforesaid, the recorder shall cause to be endorsed on the ballot containing his name, the word "drawn," and shall return it to the box; and the date of the draft shall be entered on the list of jurors opposite his name.

Clerk of board may act if recorder fail to do so.

In case the recorder shall fail to perform the duties required of him under this or the two preceding sections, the same shall be performed by the clerk of the board of supervisors.

Pay of grand juror

Out of county treasury.

"27. Every person who shall serve upon a grand jury shall be entitled to receive one dollar for each day he may so serve, to be paid out of the county treasury; but he shall not in any case receive more than three dollars for services rendered at one term of court.

Pay of juror in cases of felony.

"28. Jurors in prosecutions for felony shall be paid as provided in the tenth section of chapter two hundred and eight.

Pay of juror attending on venire

Out of county treasury.

When out of state treasury.

Jury costs—amount of and against whom taxed.

"29. Any person summoned as aforesaid by virtue of the *venire facias*, and actually attending upon the court, whether he be called to serve on a jury or not, shall, for each day he so attends, be entitled to receive one dollar, to be paid out of the county treasury; except that for any day that any person shall be sworn to serve on a misdemeanor case he shall for that day be paid out of the state treasury. There shall be taxed in the costs against any person against whom a verdict of a jury may be rendered in a misdemeanor case, six dollars for jury costs, which, when collected from such party shall be paid into the state treasury. And there shall be taxed in the costs against any person in a civil cause, who may be non-suited, or against whom a verdict of a jury may be rendered, the sum of six dollars for jury costs, which, when collected off of said party shall be paid into the treasury of the county.

Juror departing without leave not to be paid.

"30. No juror who shall depart without leave of the court, or being summoned as a witness for the State, shall charge for his attendance as such, shall be entitled to receive any compensation for his services as a juryman.

"32. The clerk of any court upon which jurors are in attendance, shall, before its final adjournment at each term and under the direction of the court, make an entry upon its minutes, stating separately the amount which each juror is entitled to receive out of the state treasury or out of the county treasury for his services or attendance during the term. It shall be the duty of such clerk, as soon as practicable after the adjournment of the court to transmit to the auditor certified copies of all orders under this section, making allowances payable out of the state treasury.

Clerk of court to keep account of what each juror is entitled to.

And report to auditor amounts payable by state.

"33. It shall be the duty of such clerk as soon as practicable after the adjournment of the court, to deliver to each juror a certified copy of any order under the next preceding section, making an allowance to him, payable out of the state treasury or out of the county treasury; and the sheriff of such county shall, upon demand, pay to such juror the amount allowed him, which shall be repaid to the sheriff out of the state treasury or out of the county treasury upon the production of satisfactory proof that the same has actually been paid by him."

Certificate of amount due him to be given to each juror,

Which the sheriff is to pay,

2. Every person summoned as a juror shall, before he is sworn as such, make oath or affirmation that he will support the constitution of the United States and the constitution of this state.

Jurors to take oath to support the constitution.

3. The thirty-first and thirty-seventh sections of chapter one hundred and sixty-two of the Code of Virginia, second edition, are hereby repealed.

Sec. 31 and 37 of chap. 162 repealed.

4. The tenth section of chapter two hundred and eight of the Code of Virginia, second edition, shall be amended and reenacted, so as to read as follows:

Sec. 10 of chapter 208 amended.

"10. In a felony case in a circuit court, if qualified jurors, not exempt from serving, cannot be conveniently found in the county in which the trial is to be, the court may cause so many as may be necessary of such jurors, to be summoned from any other county by the sheriff thereof, or by its own officer. Every juror so summoned shall be paid one dollar for each day he attends, and the same mileage as a witness in a civil case; and every juror residing in such county, summoned on such jury, shall be paid in like manner, one dollar for each day he attends. Such jurors shall be forthwith paid by the officer of the court, and he shall be repaid out of the state treasury on the order of the court."

Jury from another county in cases of felony.

Pay of such juror.

5. All persons placed upon any list of persons from which jurors are to be selected or drawn, and all persons summoned as grand or petit jurors, shall be persons of known loyalty to this State and the United States, who have not voluntarily borne arms against the United States, nor given aid, counsel countenance or encouragement to persons engaged in armed hostility thereto; and who have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. Any objection to a juror arising under this section shall be good cause for challenge before he is sworn as a juror. No plea in abatement to any indictment shall be allowed for any objection to any grand juror arising under this section.

Loyalty of grand and petit jurors.

Exceptions for disloyalty.

CHAP. 94.—An ACT to extend the corporate limits of the City of Parkersburg.

Passed November 5, 1863.

Be it enacted by the Legislature of West Virginia:

Extension of corporate limits.

1. The corporate limits of the town of Parkersburg, in the county of Wood, are hereby so extended as to include all the land lying between the Ohio and Little Kanawha rivers, to the south and west of a line beginning on the Ohio river at a line between lands now or late of Albert G. Leonard and Tillinghast A. Cook, and running thence with the said line and an extension thereof to a line of lands now or late of James M. Stevenson; and thence with the last mentioned line to the Little Kanawha river; and all the land lying between the said rivers and to the south and west of the above described line, not heretofore a part of the said town, is hereby annexed thereto and made part thereof.

Government of land annexed.

2. The land so annexed to the said town, and the inhabitants thereof, are hereby made subject to the jurisdiction of the council of the said town, as fully as the present town and its inhabitants are now subject thereto; and shall be governed by all the provisions of the orignal charter of the said town and the acts amendatory thereof, so far as the same are now of force, except as hereinafter excepted.

When taxed.

3. No part or parcel of the land hereby annexed to the said town, now used exclusively for gardening, farming, grazing, pasturing or other agricultural purpose, shall be assessed with or be liable for any taxes levied for the use of the said town or the council thereof, unless, or until, such part or parcel has been, or shall hereafter be, laid off into streets and lots, and such lots have been, or shall hereafter be, sold or offered for sale by the owner or owners thereof.

When buildings on same to be taxed.

4. No building now or hereafter erected on the land so annexed to the said town shall be taxed by the said town or the council thereof, unless the same fronts on some street, alley, road or turnpike, by which such building is accessible from the present limits of the said town; but where any building is so situated, the same, and not exceeding one acre of land connected therewith and appropriated to the purposes thereof, or of its occupants, may be assessed according to its value, and the owner or occupier thereof charged with such taxes or levies thereon as may be lawfully imposed by the said council; but the rate of taxation so charged shall not exceed one-half of the rate at the same time charged against similar property within the present limits of the said town.

Rate of taxation thereon.

Tax on lands when certain improvements shall have been made by council.

5. Whenever the said council shall cause any side-walk, or any part thereof, on any street, road or turnpike that is now or may hereafter be opened through any part of the land hereby annexed to the said town, to be graded and the curbstone thereof to be set or placed on one or both sides of such street, road or turnpike, all the land on both sides thereof, so far as the said grading and curbing extends, to the depth, not exceeding two hundred feet, of one tier of lots on either side, may at the next or any subsequent assessment of the property of the said

town, be assessed according to its value, and thereafter taxed at the same rate as similar property within the present limits of the said town is or may be taxed.

Turnpikes lying within extension

6. So much of any turnpike in which the State is interested, as lies within the said extension, is hereby to the extent of such interest ceded and relinquished to the said town, upon condition that the said town shall keep the same in good order and repair, and shall not at any time charge or receive any toll or other compensation for the passage or transportation over the same. The said council having acquired the necessary land for the purpose, may alter the location of so much of any turnpike or of any public road as lies within the said extension, in order to conform the same to the general plan of the said town, or for any other public purpose. They shall also cause all the streets and public roads lying within the same to be kept in good order and condition; but this shall not apply to any street or road hereafter opened or dedicated to the public within the said extension by private persons, unless the said council shall have first accepted such street or road as a street of the said town.

Authority of council to change location of same.

Duty of council respecting streets and roads within extension

Survey and maps of exterior line.

7. As soon as practicable after the passage of this act, the said council shall cause the exterior line of the said town from river to river, as described in the first section of this act, to be accurately surveyed, if necessary, and designated on the ground by suitable marked objects or monuments, and two accurate maps or plats of the land hereby annexed to the said town to be made, one of which shall be retained by them, and the other deposited in the office of the recorder of the county of Wood, to be there recorded at the expense of the said town.

Change in designation of town.

8. From and after the passage of this act the said town shall be known as the City of Parkersburg; and all laws now in force having relation to the said town by its former designation, shall have the same relation to the said city.

CHAP. 95.—An ACT to alter part of the division lines between the county of Webster and the counties of Randolph, Nicholas and Greenbrier.

Passed November 7, 1863.

Be it enacted by the Legislature of West Virginia:

Alteration of lines between Webster, Randolph, Nicholas and Greenbrier.

1. The division lines between the county of Webster and the counties of Randolph, Nicholas and Greenbrier, are hereby altered so as to run as follows, to-wit: Beginning at a corner of the counties of Webster and Nicholas, at or near the mouth of Skile's creek, on Big Birch river, and running thence with a line of the two counties last named, and an extension thereof, a straight course to the mouth of Stroud's creek, on Gauley river; thence to a corner now of the counties of Nicholas and Greenbrier, on or near Cranberry river, and thence a straight course to a corner now of the counties of Greenbrier and Pocahontas, on or near Gauley river, and thence with a line of Pocahontas to the mouth of Dry Fork on Elk river, and thence a

straight line to where the present line of Webster county leaves the county of Upshur; and so much of the counties of Randolph, Nicholas and Greenbrier as is included within the said lines is hereby annexed to and made part of the county of Webster.

Addition to Webster.

Ratification of change.

2. The alteration and annexation herein provided for shall not be of force unless the same are ratified by a majority of the votes cast "for alteration" and "against alteration," at an election to be held in the county of Webster, and also in the county of Randolph, the county of Nicholas and the county of Greenbrier, on the day of the first township election to be held in each; nor unless the surveyor of the county of Webster shall run and mark the new lines above described, and make five fair plats thereof, which he shall duly certify, and forward one to the secretary of the state, and one each to the recorders of the counties of Webster, Randolph, Nicholas and Greenbrier, who shall file and carefully preserve the same in their respective offices.

Survey and maps of new lines.

Compensation of surveyor.

3. The account of the said surveyor for fees and expenses incurred under the provisions of this act shall be audited by the board of supervisors, and paid out of the treasury of the county of Webster.

CHAP. 96.—An ACT fixing the limits for Allowances to County Officers.

Passed November 7, 1863.

Be it enacted by the Legislature of West Virginia:

Allowances by boards of supervisors to.

The following named county officers shall be allowed, annually, by the boards of supervisors of their respective counties for their public services, (for which no other fee or reward is allowed by law,) to be paid out of the county treasury, such sums as the said boards deem reasonable, to-wit: Prosecuting attorneys, not less than one hundred or more than six hundred dollars; sheriffs, not less than fifty or more than two hundred dollars; clerks of boards of supervisors, not less than fifty or more than six hundred dollars; clerks of circuit courts, not less than fifty or more than two hundred dollars; and jailors, not less than thirty or more than sixty dollars.

Prosecuting attorneys, Sheriffs, Supervisor's clerk, Circuit clerks, Jailors.

CHAP. 97.—An ACT to compel the attendance of Members of the Legislature.

Passed November 7, 1863.

Be it enacted by the Legislature of West Virginia:

Absence without leave forbidden.

1. No member shall absent himself from the service of the legislature, without leave of the branch of which he is a member first obtained. Either branch shall at any time have power to compel the attendance of absent members, and may send the sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, not absent on leave, as the majority of such members present shall agree, at the expense of such absent members respectively, unless such excuse for non-attendance shall be made, as either branch

Authority to compel attendance

At expense of absentee.

of the legislature, when a quorum is convened, shall judge sufficient, and in that case the expense shall be paid, when certified by the presiding officer, out of the general appropriation made for the pay of the legislature. Unless he be excused.

2. Either branch of the legislature, by a vote of a quorum thereof, may enter on its journal a vote of censure against any member whose attendance it may have found necessary to compel by virtue of the preceding section; but no censure shall be voted against any member until he has had opportunity to make excuse for such absence before a quorum of the branch of which he is a member, and such quorum shall have voted his excuse insufficient. Vote of censure. Proviso.

CHAP. 98.—An ACT to authorize the recovery of damages when death is caused by the wrongful act or default of another.

Passed November 9, 1863.

Be it enacted by the Legislature of West Virginia:

1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof; then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter. Case in which damages may be recovered.

2. Every such action shall be brought by and in the name of the personal representatives of such deceased persons; and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of personal estates left by persons dying intestate, and in every such action the jury may give such damages as they shall deem fair and just, not exceeding five thousand dollars, with reference to the pecuniary injury resulting from such death to the wife and next of kin to such deceased person: provided, that every such action shall be commenced within two years after the death of such deceased person. How action may be brought. Amount recovered. Limit to amount recoverable. When action must be commenced.

CHAP. 99.—An ACT changing the name of the Lunatic Asylum at Weston.

Passed November 12, 1863.

Be it enacted by the Legislature of West Virginia:

The directors of the lunatic asylum at Weston shall continue to be a corporation, but instead of their present name shall hereafter have the corporate name of the "West Virginia Hospital for the Insane." And the said board of directors shall have and exercise the same powers that the board of directors of the lunatic asylum west of the Alleghany mountains were heretofore authorized by law to exercise. West Virginia Hospital for the Insane.

CHAP. 100.—An ACT to regulate Elections by the People.

Passed November 13, 1863.

Be it enacted by the Legislature of West Virginia:

General elections. Officers to be elected annually.

1. There shall be elected on the fourth Thursday of October, in the year eighteen hundred aud sixty-four, and the same day in every year thereafter, delegates for the several delegate districts and counties not included in delegate districts; and one senator for every senatorial district;

Officers to be elected every two years.

And on the fourth Thursday of October, in the year eighteen hundred and sixty-four, and the same day in every second year thereafter, a governor, secretary of the state, treasurer, auditor and attorney general for the state; a representative in the congress of the United States for each congressional district, for the term commencing on the fourth day of March next after the election; and a prosecuting attorney, surveyor of lands, recorder, county treasurer, and the number of assessors prescribed by law, for every county;

—four years.

And on the fourth Thursday of October, in the year eighteen hundred and sixty-six, and the same day in every fourth year thereafter, a judge of the supreme court of appeals for the state; and a clerk of the circuit court and sheriff for every county;

—six years.

And on the fourth Thursday of October, in the year eighteen hundred and sixty-eight, and the same day in every sixth year thereafter, a judge for every circuit;

Presidential electors.

And on the Tuesday next after the first Monday of November, in the year eighteen hundred and sixty-four, and the same day in every fourth year thereafter, or at such other time as congress shall prescribe, electors of president and vice-president of the United States for this State. At least sixty days before the election for the said electors the governor shall, by proclamation, to be published in some newspaper printed in each county of this State where any such paper is printed, give notice of the time for holding such election, and the number of electors to be then chosen.

Places of voting.

2. The former election precincts and places of voting shall be retained in each county until it is divided into townships, but shall then be abolished; and all elections by the people be held thereafter at the places to be appointed, in the manner hereinafter prescribed, for holding township elections.

Places of holding township elections. How first appointed.

3. The commissioners for each county named in the schedule of the act passed July 31, 1863, entitled "An Act to provide for the division into townships of the several counties of the State," shall appoint some convenient place or places in every township of their county for holding the first township election; and the board of supervisors of each

To be appointed thereafter by board of supervisors.

county shall thereafter from time to time appoint the places for holding elections in the several townships of their county; but all township and other elections shall be held at the places to be appointed, as aforesaid, by the said commissioners, until the board of supervisors shall otherwise order.

4. When a place for holding elections is appointed or changed by a board of supervisors, their clerk shall notify, in writing, the clerk of the township interested, who shall file such notice in his office, and immediately cause copies thereof to be conspicuously posted at the place appointed or changed, and at two other public places in the township; and may also give notice thereof by advertisement in the newspapers, if there be any, printed in the county. Change of place of voting—how notified.

5. The first township election shall be held in every township on such day as may designated for the purpose by the commissioners named in the said schedule for the county of which such township is a part; and if from any cause it be not held on the day first appointed, the said commissioners may designate another day therefor; and so again from time to time until the first township election be held. The commissioners shall cause at least ten days notice to be given of the time and place for holding such election, by notices conspicuously posted at three public places in each township, and may also give notice by advertisement in the newspapers, if there be any, printed in the county. They shall appoint for each township three proper persons, who are voters thereof, to act as temporary supervisor and inspectors at the said election, and make due returns thereof to the board of supervisors to be then elected for the county; and the persons so appointed shall employ the necessary clerks or writers. They shall also cause proper ballot-boxes, poll books, tally-papers and forms, and whatever else may be necessary for holding the said first township election and making due returns thereof, to be provided and furnished in proper time at every place of voting in their county. If at the time for holding the said election any of the persons appointed to act as temporary supervisor or inspectors be absent, or being present fail or refuse to act as such, the other or others of them may fill the vacancy, or if they all be absent, or fail or refuse to act, or none have been appointed, the voters present may appoint any three voters of the township as temporary supervisor and inspectors. If the commissioners named in said schedule for any county fail to fix the place and time for holding the said first election in any township of their county, then any three voters residents of such township may, at any time after the first day of December, in the present year, fix the same by giving the same notice thereof as the commissioners for the county are in this section directed to give. All expenses properly incurred in carrying this section into execution shall be certified by the said commissioners to the board of supervisors of the county, and be audited and paid as provided in the fiftieth section of this act. The first and second sections of the schedule of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "An Act providing for and regulating township meetings and elections," are hereby repealed so far as they are inconsistent with this act.

Time of holding first township election.

Notice thereof.

Who to conduct same.

Ballot boxes, &c., to be furnished.

Absence, &c., of the conductors provided for.

Failure to fix the time and place of first township election.

Expenses of the election.

Laws repealed.

6. The annual township elections shall be held on the fourth Thursday of April, in the year eighteen hundred and sixty-four, and the same day in every subsequent year; but if the first township election be not held in any county before the fourth Thursday of April next,

Annual township elections.

it may be appointed and held after that day under and according to the preceding section.

Township elections. Officers to be elected annually.

7. At the said first township election, and every annual township election thereafter, the voters of each township shall elect a supervisor, clerk of the township, an overseer of the poor, a township treasurer, and two inspectors of election;

Officers to be elected every four years.

And at the said first township election, and the annual township election to be held in the year eighteen hundred and sixty-seven, and every fourth year thereafter, they shall elect a justice; and an additional justice if the white population of their township exceed twelve hundred;

—every two years

And at the said first township election, and the annual township election to be held in the year eighteen hundred and sixty-five, and every second year thereafter, they shall elect as many constables as justices.

Surveyors of roads—first election of.

The first election for surveyors of roads shall be held in the manner prescribed in the third section of the schedule of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "An Act providing for and regulating township meetings and elections," and thereafter at every annual township election, a surveyor of roads shall be elected for each road precinct in the township.

County treasurer —first election of

At the time and place of holding the first township election in each county there shall be elected by the voters thereof a county treasurer for the unexpired term ending on the first day of January, eighteen hundred and sixty-five, to fill the vacancy now existing in said office; which election shall be held, conducted and returned by the same persons, and be subject to the same regulations as the said first township elections.

Law repealed.

So much of the eighth section of an act entitled "An Act defining, in part, the powers and duties, and regulating the proceedings of, the boards of supervisors of the several counties in the State," passed November second, eighteen hundred and sixty-three, is hereby repealed, as is inconsistent with this act.

Townsip officers first elected.

8. The supervisors, clerks of the several townships, surveyors of roads, overseers of the poor, township treasurers, inspectors of election, justices and constables, first elected, shall respectively enter on the discharge of their official duties as soon as they have taken the proper oaths of office and given bond, if any bond be required by law; but their terms of office shall expire as if the same had commenced on the twentieth day of June last.

Their term of office.

Term of those elected thereafter.

The terms of the said officers to be elected at the annual township elections shall commence on and include the twentieth day of June next after the election at which they are chosen, and continue for the periods prescribed by law.

Law repealed.

And the fourth section of the schedule of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "An Act providing for and regulating township meetings and elections," is hereby repealed so far as it is inconsistent with this act.

Inspectors of election. Each voter to vote for but one.

9. Of the inspectors of election to be elected in each township, each voter shall vote for but one only, and if any vote be given for more than one it shall not be counted as to the said office; but the two per-

sons receiving the highest number of votes, if residents of the township and voters therein, shall be declared elected.

Removal of inspector from office.

10. Any inspector of election may be removed from office by the board of supervisors of the county, for the same causes and in the same manner as county officers are removable by said board; two-thirds of the whole number elected to the board concurring in such removal.

Vacancy in office of inspector—how filled.

11. When there is a vacancy in the office of inspector of election, the supervisor of the township shall order an election to fill such vacancy, and cause the clerk of the township to give notice thereof in the manner prescribed in the seventh section of the act providing for and regulating township meetings and elections, passed September twenty-fifth, eighteen hundred and sixty-three.

If more than one place of voting in a township.

Officers for such place—how appointed.

12. If there be more than one place for holding elections in any township, the supervisor and inspectors of election for such township shall, from time to time, appoint suitable voters residing convenient to such additional place, to act as supervisor and inspectors at the elections there to be held, and the persons so appointed shall hold their office for the same term as those who appointed them, and be removable by the board of supervisors of the county in like manner as the inspectors elected by the voters of the township.

Ballot boxes, &c.—how provided.

13. The clerk of the board of supervisors of every county shall, at the expense thereof, provide and furnish in proper time at every place of voting in the county, proper ballot boxes, poll books, tally papers and forms, and whatever else may be necessary for holding the elections at such place and making due returns thereof.

Oath of officer holding election.

14. Every officer and person employed in holding any election by the people, shall, before entering on the discharge of his duties, take the following oath: "I solemnly swear that I will support the constitution of the United States, and the constitution of this State; and that in the election about to be held, I will faithfully and impartially discharge my duties, to the best of my skill and judgment." The supervisor or any one of the inspectors at any election, or of the persons acting as such, may administer the said oath to the others, and to the clerks and writers.

Supervisor and inspectors to hold all elections

15. The supervisors and inspectors of elections, (which words shall be construed to include those who act as such, temporarily or otherwise,) shall superintend, conduct, and make returns of all elections by the people held in their respective townships during their term of office, whether for United States, state, circuit, district, county or township officers; elections for municipal and militia officers excepted.

Their absence, &c. provided for.

16. If, at the time of election, the supervisor or either of the inspectors be absent, or fail or refuse to act, or there be a vacancy in either office, the other or others of them may appoint a voter of the township to fill the place for the time; or if they all be absent, or fail or refuse to act, or none have been elected or appointed, any three vo-

ters of the township may be apppointed by the voters present to act as supervisor and inspectors of such election.

Clerks of elections.

17. The clerk of the township, assisted by such person or persons as the supervisor and inspectors may employ for the purpose, shall record the names of the persons voting, and assist in counting the votes, ascertaining the result and making proper returns thereof. If the clerk be absent, or fail or refuse to act, or there be no clerk then in office, the supervisor and inspectors shall appoint a suitable person to discharge his duties at the said election.

How questions decided at the polls.

Keeping order at the polls.

18. The supervisor shall preside at the election; and if there be a difference of opinion between the inspectors, shall decide between them. He shall preserve order at, and in the vicinity of the polls; and may direct any disorderly person to be removed therefrom, and if necessary or proper, to be taken and held in custody till sunrise of the next day, or for any shorter time; which may be done by any constable of the township, or other person or persons designated by the supervisor, and no warrant or authority in writing shall be necessary. And such offender, notwithstanding his having been in custody as aforesaid, shall be liable to any penalty or punishment for his offence prescribed by law. And any person who, being thereto commanded by the supervisor, either verbally or in writing, shall fail or refuse to assist, to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall forfeit not less than five nor more than fifty dollars.

Time of opening and closing the polls.

19. The polls shall not be opened before sunrise, and shall be closed at sunset. But at every township election, if there be a township meeting on the same day, the polls shall be opened at the hour of eleven, unless the business of the meeting be sooner concluded or the same be sooner adjourned; in which case the polls may be opened immediately thereafter. If there be no township meeting on the same day, the township election shall commence at the hour of nine in the forenoon, or as soon thereafter as practicable. In either case the polls at the township elections shall continue open until sunset; but if the inspectors so direct, there may be a recess of not more than one hour at such time, after the opening and before the closing of the polls, as they may appoint.

Recess of one hour at township election.

Vote to be by ballot.

20. All elections by the people shall be by ballot; and shall, as far as practicable, be so conducted that it may not be known at the polls for whom any person has voted.

Ballot box.

How kept during the poll.

21. The ballot box shall have an aperture in the lid or top thereof to receive the ballots of the voters. While the polls are open, it shall be kept where it may be seen by the voters, and after the polls are closed, until the votes are counted and the certificates of the result are signed, shall remain in the immediate custody of the supervisor and inspectors, or of any one of them, with the consent of the others. But it shall not be opened unless the three be present; and if left at any time in the custody of one of the number, it shall be carefully sealed so that it cannot be opened without breaking the seal, and the others

shall write their names across the place or places where it is sealed. Provided that if, at any time before the returns are completed, one or more of the inspectors be absent, their places may be supplied according to the provisions of the sixteenth section.

Poll books.

22. Every poll book shall bear on the first page thereof the following heading: "Names of all persons voting at ——, in the township of —— and county of ——, this —— day of ——." Two lists shall be kept at every election of the names of the voters.

Voting—how done.

23. Every person wishing to vote at any election, shall offer to one of the inspectors a single ballot of white paper, containing the names of the persons for whom he desires to vote, and designating the office he wishes each of them to fill; which ballot shall be so folded or rolled that its contents cannot be seen. The inspector who receives the ballot shall proclaim distinctly the name of the person offering it, and hand it to the other inspector; and if both inspectors, or when they differ one of them and the supervisor, are satisfied the ballot is single, and that the person offering it is entitled to vote at the said election, one of the inspectors shall deposit the ballot in the box, and the clerks shall enter the name of the voter on the poll books. The supervisor and inspectors may inspect every ballot before it is deposited in the box, to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its contents.

Who are to vote.

Oath of voter, if required.

24. The supervisor and inspectors, at every election, shall permit all persons to vote who are residents of their township, and qualified to vote according to the first section of the third article of the constitution; but every person present and offering to vote shall, in time of war, insurrection, or public danger, if required by any voter of the township, take, before the supervisor or one of the inspectors, an oath that he will support the constitution of the United States and the constitution of this State, or produce to them the certificate of some officer authorized to administer oaths that he has taken the said oath, under pain of suspension of his right of voting. And the supervisor or either of the inspectors is hereby authorized to administer the said oath at the polls; and also to swear any person to answer questions respecting any right to vote which is claimed.

Votes rejected.

25. The supervisor and inspectors shall reject the ballots of all persons not entitled to vote; but the name of every person whose ballot is rejected, shall, if he require it, be entered in a separate list on the poll books under the heading "Rejected votes;" and the rejected ballot shall in such case be sealed up in an envelope or cover, endorsed "The ballot of A B, rejected this —— day of ——," and be returned along with the other ballots.

Absent voters.

How their votes are to be given.

26. Any person entitled to vote in the township, who is necessarily absent therefrom on the day of any election, in the service of the United States or of this State, may, at any time within the twenty-five days next preceding the election, enclose his ballot in an envelope or cover, and seal up the same and write his signature in his own proper hand on the outside of the said envelope or cover, adding to his sig-

nature some description or designation of the service in which he is employed, as for example: "Private, Co. A. 14th W. Va. Infantry." "Col. 2d W. Va. Cavalry," "Senator U. S." "Mem. Ho. Reps. U. S." "Senate W. Va.," "Ho. Del. W. Va.," "Governor," "Treasurer," "Judge of 2d Circuit," or otherwise as the fact may be. If the signature of a soldier upon such envelope or cover, be by mark, it must be attested by the person commanding at the time the regiment, company or detachment in which such soldier is employed. The envelope or cover shall be addressed to the supervisor and inspectors of the township of which the voter is a resident, or any one of the said officers, either by their names or official designations, and be transmitted by mail or otherwise. And if such envelope and enclosure be received by the supervisor and inspectors or any one of them, on or before the day of election, it shall be produced at the polls held in the said township; and if the inspectors, or when they differ, the supervisor and one of the inspectors, be satisfied that the signature on the outside of the envelope or cover is genuine, and that the person whose signature it is would, if present, be entitled to vote at the said polls, they shall open the envelope or cover, and if the ballot found therein be single, shall deposit the same in the box without unfolding or unrolling it so as to disclose its contents, to have the same effect as if the person so transmitting his vote were personally present giving the vote. And if such ballot be deposited in the box, the clerks shall enter the name of such voter on the poll books, adding thereto the word "absent." The envelopes or covers, in all such cases, shall be preserved by the supervisor and inspectors, and be filed by them as soon as possible after the close of the polls, with the clerk of the board of supervisors of the county, for public inspection.

Envelopes to be kept for public inspection.

Who are residents.

27. No person in the military, naval or marine service of the United States shall be deemed a resident of this State, or of any county or township thereof, by reason of his being stationed therein; and if any person be a resident of any county or township at the time he enters such service, or the service of this State, his residence, unless he makes known his intention to change the same, shall be considered as continuing in the said county or township during the said service, although he be stationed or employed elsewhere.

Counting the votes after the polls are closed.

28. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the inspectors and clerks in the presence of the supervisor, and the number thereof be set down in words at length at the foot of the lists, which shall then be signed by the inspectors and clerks. The ballot-box shall then be opened, and one of the inspectors taking therefrom one ballot at a time, in the presence of all the other officers, shall read therefrom the designations of the offices to be filled, and the names of the persons voted for for each office, and hand the ballot to the other inspector; who, if satisfied it was correctly read, shall string it on a thread. The contents of the ballots as they are read shall be entered by the clerks, under the supervision of the supervisor and inspectors, on tally-papers provided for the purpose, by suitable marks made opposite to or under

the name of each person voted for, so as to show the number of votes received by every person for any office to be filled. The ballots shall be counted as they are strung upon the thread; and whenever the number shall be equal to the number of voters entered on the poll books, the excess, if any, remaining in the ballot box shall be immediately destroyed without unfolding or unrolling the same, or allowing any one to examine or know the contents thereof.

Certain votes not to be counted.

29. If two or more ballots be found folded or rolled together they shall be rejected and immediately destroyed. And if any ballot be found to contain more than the proper number of names for any office, it shall not be counted as to the said office. In any election for senator, or delegate for a delegate district, if a person be voted for in any ballot, who is not a resident of the proper county, as required by the fourth and eleventh sections of the fourth article of the constitution, the ballot shall not be counted for the said office; or if two or more persons are to be chosen as delegates for a delegate district, or for two counties voting together, and it is required by the constitution that they should be residents of different counties, but the persons voted for be residents of the same county, the ballot shall not be counted in favor of either of the said persons. No mistake or error in the designation of the office or person voted for in any ballot shall vitiate the same or cause it to be rejected, if it be manifest what was intended by the voter.

Mistake in ballot —rule respecting

Inspectors' certificates. Form of.

30. As soon as the results are ascertained the inspectors shall sign two certificates thereof to the following effect: "We, the undersigned, who acted as inspectors of the election held at ———, in the township of ———, and county of ———, on the —— day of ———, do hereby certify, that having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of ——, (here designate the office, as for example, "Delegate for the county of Barbour," or "Delegate for the first delegate district," or "Senator for the first senatorial district," Judge for the first circuit," "Representative in the congress of the United States for the first congressional district," "Governor of the State," "Judge of the supreme court of appeals," "Supervisor of the said township," and-so-forth, as the case may be,) "A. B. received —— votes, C. D. —— votes, and E. F. —— votes," and so on throughout, stating, according to the truth, the full name of every person voted for for every office, and in words at length the number of votes he received for the same; and concluding as follows: "Given under our hands this —— day of ———." The said two certificates shall correspond in all respects with each other, and each shall contain complete returns of the polls taken at the said place of voting for every office to be filled. When the said certificates are signed, the ballots, including the rejected ballots sealed up as provided by the twenty-fifth section of this act, shall be enclosed by the inspectors in an envelope or cover, which they shall seal up, and write their names across the place or places where it is sealed, and endorse on the outside of the said envelope or cover as follows: "Ballots of the election held at

Ballots to be sealed up.

——, in the township of ——, and county of ———, the —— day of ———." The inspectors, or one of them, shall, within three days, excluding Sundays, after the day on which the election was held, deliver the ballots so sealed up, one set of the poll books, and one of the said certificates, to the clerk of the board of supervisors of their county, and the other certificate and set of the poll books to the recorder of the county.

Ballots, poll books and inspectors' certificates—how disposed of.

Board of supervisors judges of election.

Proceedings of board.

31. The board of supervisors of each county shall be the judges of the election, qualifications and returns of their own members, and of all county and township officers. They shall convene on the twelfth day after every election held in their county or any township thereof, and their clerk shall lay before them the ballots, poll books, inspectors' certificates and the envelopes which contained the ballots of absent voters, delivered to him as aforesaid. They may, if deemed necessary, require the attendance of any of the inspectors or other officers or persons present at the election, to answer questions under oath respecting the same, and may demand the production of the poll books and certificates concerning the said election filed in the office of the recorder; and take such other order as shall seem proper to procure correct returns and ascertain the true result of the said election in their county. They may adjourn from day to day as in other cases; and when a majority of the board is not present their meeting shall stand adjourned till the next day. They may open and examine any of the sealed packages of ballots; but in such case they shall seal up the same again along with the original envelope or cover, in another envelope or cover, and their presiding officer or clerk shall write his name across the place or places where it is sealed, and endorse on the outside, "Ballots of the election held at ——, in the township of ——, and county of ———, the —— day of ———." When they have made their certificates and declared the result as hereinafter provided, they shall deposit the envelopes of the absent voters and the sealed packages of ballots in the office of the recorder. The recorder shall carefully preserve the certificates and poll books deposited in his office. The envelopes of the absent voters and the sealed packages of ballots shall be preserved by him for one year, and then be destroyed without opening the said packages.

Envelopes, ballots, &c.,—how disposed of.

County and township officers

Resolution of board declaring who are elected.

32. When an election is held for any of the following officers, that is to say: Prosecuting attorney, surveyor of lands, recorder, assessor, clerk of the circuit court, county treasurer, and sheriff; or supervisor, clerk of the township, surveyor of roads, overseer of the poor, township treasurer, inspectors of election, justice and constable; the board of supervisors of the county, at a meeting held pursuant to the last section, shall declare by resolution or resolutions entered on their journal, who are elected and to what offices; except in cases where notice in writing has been previously filed with their clerk, or is presented at such meeting before the resolution is passed, of the intention of any person voted for at such election for any office, to contest the election of any person appearing to have received a higher number of votes than the contestant for such office, or where notice is given as

Contested cases.

aforesaid by any voter of his intention to contest the qualifications of any person appearing by the returns to be elected. In such cases no declaration of the result shall then be made; but the board shall appoint a day, not less than five nor more than twenty days thereafter, when they will hear and consider such written depositions taken on behalf of either party on due notice to the other, and such documentary evidence as may be produced. They may continue the hearing from time to time if it be shown that justice and right requires it, but not beyond the twentieth day after the day first appointed for the hearing; and after they have heard, as aforesaid, the evidence, they shall in like manner declare the result in the contested cases. The cost of each deposition, or set of depositions, and of each official copy, to be used in evidence in such case, shall be noted thereon by the officer taking the depositions or furnishing the copy; and the board may direct what amount of the said costs, and of the costs of serving notices, either party is entitled to recover from the other; the amount so certified, if not paid within ten days, may be recovered before any court or justice having jurisdiction.

Proceedings in contested cases.

Costs in contested cases.

33. When the result of an election is declared by the board of supervisors, pursuant to the last section, the said board shall cause a copy of the resolution, signed by their presiding officer and clerk, to be delivered, if demanded, to each person thereby declared to be elected; and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared.

Credentials of county and township officers.

34. In any county where there is not at the time a board of supervisors, the persons lawfully acting as supervisors of the election within the county, or a majority of them, may convene on the twelfth day after the election and act as such board, under and pursuant to the last three sections.

Counties where there is no board of supervisors.

35. When an election is held in a county for any of the following officers, that is to say: For delegate, senator, governor, secretary of the state, treasurer, auditor, attorney general, judge of the supreme court of appeals, judge for a circuit, representative in the congress of the United States, and electors of president and vice-president of the United States, the board of supervisors of such county, under the regulations prescribed in the thirty-first section of this act, shall carefully and impartially ascertain the result of the said election in their county, and cause to be signed by their presiding officer and clerk, as many certificates thereof as may be necessary, to the following effect: "The board of supervisors of the county of —— having carefully and impartially examined the returns of the election held on the —— day of ——, do hereby certify, that in the said county, for the office of ——, A. B. received —— votes, C. D. —— votes, and E. F. —— votes. In witness whereof the said board have caused this certificate to be signed by their president and clerk, this —— day of ——."

State officers, &c.

Board of supervisors to certify the result in their county.

Form of their certificate.

The said board shall cause separate certificates to be signed of the result of the election within their county, for each of the offices specified in this section which is to be filled; and in the said certifi-

cates shall set forth, according to the truth, the full name of every person voted for, and in words at length the number of votes he received for any office.

How such certificates disposed of.

36. The certificates of the board of supervisors, made pursuant to the preceding section, shall be by them disposed of as follows:

Delegates to legislature.

Of the certificates respecting the election for delegate or delegates, they shall transmit one to the clerk of the house of delegates at the seat of government; who shall submit the same to the house as soon as it shall thereafter assemble, together with a list of the persons appearing thereby to be elected. The said board shall also deliver one, if demanded, to each person appearing to them to have been elected as delegate;

State senator.

Of the certificates respecting the election for senator, they shall transmit one to the clerk of the senate at the seat of government, to be submitted by him to the senate as soon as it shall thereafter assemble, together with a list of the persons appearing thereby to be elected;

Governor.

Of the certificates respecting the election for governor, they shall transmit one to the secretary of the state at the seat of government, endorsing on the envelope or cover as follows: "Returns of the election for governor;" and stating thereon the aggregate vote in the county for each candidate. The secretary of the state shall deliver the same unopened to the speaker of the house of delegates on the first day of the next session of the legislature; and the speaker shall, within ten days thereafter, in the presence of a majority of each branch of the legislature, open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more have the highest and an equal number of votes, one of them shall thereupon be chosen governor by the joint vote of the two branches;

Proceedings to ascertain who is elected governor.

Sec'y of state, treasurer and auditor.

Of the certificates respecting the election of the secretary of the state, treasurer and auditor, respectively, they shall in each case transmit one to the secretary of the state, endorsing on the envelope or cover that it is returns of the election for secretary of the state, auditor or treasurer, as the case may be, and stating thereon the aggregate vote in the county for each candidate; and the same shall be delivered, unopened, to the speaker of the house of delegates on the first day of the next session, to be acted upon by the legislature in like manner as the returns of the election for governor;

Att'y general, judges, representative in congress

Presidential electors.

Of the certificates respecting the election for attorney general, judge of the supreme court of appeals, judge for a circuit, representative in the congress of the United States, and electors of president and vice-president of the United States, respectively, the board of supervisors shall transmit one in each case to the governor, who shall ascertain who are elected and make proclamation thereof.

Commissions of judges and attorney general.

The judges and attorney general shall also be commissioned by the governor.

Certificates of board of supervisors—how and where forwarded

In every case the said certificates shall be transmitted, as aforesaid, by mail or some safe and expeditious conveyance to the proper officer, on or before the fifteenth day after the election, in an envelope or

cover under seal, the presiding officer or clerk of the board of supervisors writing his name across the place or places where it is sealed.

A duplicate of every such certificate shall also be filed in the office of the recorder of the county for public inspection. Duplicates to be filed with recorder.

37. Whenever the governor, senate or house of delegates, for any reason deem it proper, they may by special messenger or otherwise, send for and procure proper returns from any county or counties; and the poll books, ballots and certificates of the inspectors and board of supervisors, and the envelopes of absent voters deposited in the offices of the recorders shall be at all times subject to the order of the Governor, or of either branch of the legislature. Governor, &c., may send for returns.

38. The governor shall, if demanded, give a certificate under his hand and the great seal of the state to every person elected a representative in the congress of the United States, or an elector of president and vice-president of the United States, which certificates respectively shall be to the following effect: Credentials issued by the governor.

"State of West Virginia, to wit:

"I, —— governor of the said state, pursuant to the act of the legislature thereof in such case made and provided, do hereby certify that A. B. of the county of ——, was duly chosen on the —— day of ——, a representative in the congress of the United States, for the —— congressional district of this State, composed of the counties of ——, for the term commencing on the fourth day of March next," (or, "for the unexpired term ending on the third day of March ——," as the case may be.) "Given under my hand and the great seal of the said State of West Virginia, this —— day of ——." Representative in congress.

"State of West Virginia, to wit:

"I, —— governor of the said state, pursuant to the act of the legislature thereof, in such case made and provided, do hereby certify that A. B. of the county of ——, C. D. of the county of ——," (and so on, stating the full name of every person elected and the county in which he resides,) "were duly appointed by this State, at an election held therein, on the —— day of ——, electors of president and vice president of the United States. Given under my hand and the great seal of the said state of West Virginia, this —— day of ——." Presidential electors.

39. The persons chosen as electors of president and vice president of the United States, shall meet in the office of the governor at the seat of government of this State, on the first Wednesday of December, in the year eighteen hundred and sixty-four, and the same day in every fourth year thereafter, or such other day as congress shall prescribe, and then and there give their votes, and make, certify and transmit lists thereof, in the manner prescribed by the constitution and laws of the United States. If any of the said electors so chosen fail to attend by the hour of ten in the forenoon of the said day, the electors present shall supply the vacancy, by appointing an elector in place of each one so failing to attend; and every elector so appointed shall be entitled to vote in the same manner as if he had been originally chosen by the people. Presidential electors—when and where to meet. Their proceedings. Vacancies.

Their pay and mileage.

40. Every elector of president and vice president of the United States, shall be entitled to the same pay and milage that is allowed to members of the legislature, to be paid out of the treasury of the state.

Credentials of senator of U. S.

41. When any senator shall be chosen by the legislature to represent this State in the senate of the United States, the clerk of the house of delegates shall give information of the same to the governor, who shall cause a credential to be made out to the following effect:

"State of West Virginia, to wit:

"The legislature of this State having, on the —— day of ——, in pursuance of the constitution of the United States, chosen A. B., of the county of ——, a senator from this State for six years, beginning on the fourth day of March, in the year ——," (or "for such term as may be assigned to him according to the said constitution;" or "to fill the vacancy which has happened by the death," "resignation," or otherwise, "of C. D.") "I, governor of the state of West Virginia, do hereby certify the same to the senate of the United States. Given under my hand and the great seal of the said state this——day of——."

The governor shall accordingly sign the said credential, and cause the great seal of the state to be affixed thereto, and deliver the same to the senator so chosen.

Vacancy in office of senator of U. S

42. When a vacancy shall happen during the recess of the legislature in the representation from this State in the senate of the United States, and the executive shall make a temporary appointment to fill such vacancy, the governor shall cause a credential, under his hand and the great seal of this State, to be delivered to the person so appointed, to the following effect:

Credential of senator appointed by the governor.

"State of West Virginia, to wit:

"A. B. who was, according to the constitution of the United States, a senator from this State for the term ending on the third day of March, in the year —— having died," ("resigned," or otherwise, as the case may be,) "during the recess of the legislature, I, —— governor of the state of West Virginia, do by virtue of the said constitution appoint C. D., of the county of ——, a senator from this State in the senate of the United States, until the next meeting of the legislature. Given under my hand and the great seal of the said State, this —— day of ——."

Elections to fill vacancies—general rules.

43. Elections to fill vacancies shall be for the unexpired term; and shall be held at the same places as other elections, and be superintended, conducted and returned, and the results ascertained, certified and declared in the same manner, and by the same officers; and the persons elected, having first duly qualified, shall enter upon the duties of their respective offices within ten days after the result of the election shall have been declared according to law.

Vacancy in office of judge, &c.

44. When a vacancy exists in the office of judge of the supreme court of appeals or of any circuit, or secretary of the state, auditor, treasurer or attorney general, or in the representation from this State in the congress of the United States, the governor shall, within ten days after the fact comes to his knowledge, give notice thereof by

Proceedings to fill same.

proclamation to be published in such newspapers printed in the state as he may deem best calculated to give information thereof to the voters of the state, circuit or district; and in the said proclamation he shall appoint some day, not less than thirty nor more than sixty days from the date thereof, for holding the election to fill such vacancy; which election shall be held accordingly. In the case of a vacancy in the office of representative in congress, he shall also issue writs of election, directed to the sheriffs of the several counties included in the congressional district; and every sheriff, on receiving the same, shall immediately give notice thereof to the supervisors and inspectors of election of the several townships of his county. Any vacancy which may exist in the office of judge of the supreme court of appeals, judge of a circuit, secretary of the state, auditor, treasurer, or attorney general, may be filled by the governor, if he deem it necessary, by a temporary appointment to expire when the person to be elected to fill such vacancy shall be duly qualified to act. The bond, if any be required by law, to be given by the officer so temporarily apppointed, shall be in such penalty as the governor may direct, or may be dispensed with, if he so order.

Representative in congress.

Temporary appointments by the governor.

Bond in such cases.

45. A writ of election to fill a vacancy in the legislature shall be issued by the governor when the vacancy occurs during the recess of the legislature, and by the president of the senate or speaker of the house of delegates, as the case may be, when such vacancy happens during the session, or has not been previously filled. The said writ shall be directed to the sheriff of the proper county, or to the sheriffs of the several counties included in the delegate or senatorial district, as the case may be, and shall prescribe the day of election; and every sheriff, on receiving the same, shall immediately give notice thereof to the supervisors and inspectors of election of the several townships of his county; and shall also cause notice of the same to be conspicuously posted at every place of voting in such county, and to be published in the newspapers, if there be any, printed therein.

Vacancies in the legislature.

Writ of election.

46. when a vacancy exists in the office of clerk of the circuit court, sheriff, prosecuting attorney, surveyor of lands or recorder, the judge of the circuit to which the county belongs, shall, within ten days after the fact comes to his knowledge, issue a writ of election to fill the vacancy, to be directed and proceeded with in the manner prescribed by the last section; and in the meantime may, if deemed necessary, fill the office by a temporary appointment, to expire when the person to be elected to the said office shall be duly qualified to act. The bond, if any be required by law, to be given by the officer so temporarily appointed, shall be in such penalty as the judge may prescribe, or may be dispensed with, if he shall so order.

When circuit judge to issue writ.

Temporary appointment by the judge.

Bond in such cases.

47. When a vacancy exists in the office of assessor, county treasurer, supervisor, clerk of the township, surveyor of roads, township treasurer, overseer of the poor, justice or constable, the board of supervisors of the county, as soon as they have information of the fact, shall order an election to fill the vacancy, giving at least ten days notice thereof by notices conspicuously posted at three public places

When board of supervisors to order election to fill vacancy.

in each township or townships concerned, and may also give notice by advertisement in the newspapers, if there be any, printed in the county. The sixth section of the "act providing for and regulating township meetings and elections," passed September 25th, 1863, is hereby repealed so far as it is inconsistent with this act.

Law repealed.

Officers to reside in the districts for which they were chosen.

48. Every officer except prosecuting attorney, during his term of office, shall reside in the township, county, district or circuit for which he was elected; and if he remove therefrom, or if any officer remove from the state, the office shall be thereby vacated; but this provision shall not apply to senators and representatives in congress.

Ties—how decided.

49. When the governor or a board of supervisors are to declare the result of an election, and it shall appear to them that two or more of the persons voted for have received an equal number of votes, so that the proper number is not elected, they shall decide the tie by electing one of the said persons.

Pay of officers holding elections

50. Every supervisor and inspector of election shall be allowed one dollar and fifty cents for each day, and every clerk or writer one dollar for each day, they shall be necessarily employed in holding elections and making returns thereof; which allowances, together with the cost of the ballot boxes, poll books and forms, and all expenses of holding elections in any county, whether for township, county or other officers, shall be audited by the board of supervisors, and paid out of the county treasury, as other claims or demands against the county.

Expenses of elections to be paid out of county treasury.

No tax on state seal.

51. When the seal of the state is affixed to any certificate or commission required by this act, no tax or fee shall be charged therefor.

Lists of voters to be made by assessor. Separate list for each township.

52. Every assessor shall, at least thirty days before the fourth Thursday of October in each year during his term of his office, make a separate list for each township in his county, or revenue district, of all white male citizens of the state residing in such township, who, on the the said fourth Thursday of October will have attained the age of twenty-one years, and if they shall not in the meantime have changed their residence, will then have resided at least one year in the state, and thirty days in the county. In such list he shall include, under a distinct heading, so far as he may be able to ascertain the same, all persons necessarily absent in the servce of the United States, or of this State, who were residents of the township at the time they entered such service, and have not made known their intention to change their residence, and will, on the said fourth Thursday of October, possess the qualifications of voters under and according to the twenty-seventh section of this act. In discharging this duty, the assessors shall be subject to the same rules which are prescribed by law to govern their conduct in ascertaining persons and subjects to be listed for taxation; and shall receive three cents for every person properly listed by them, to be paid out of the county treasury. They shall return a fair copy of the list for each township to the clerk thereof, at least ten days before the said fourth Thursday of October, If any assessor fail to do so, or if he wilfully and knowingly make an improper entry on any such list, or wilfully and knowingly omit or refuse to enter thereon any person

List of absent voters.

Pay of assessor.

To whom list returned, and when.

Penalties on assessor.

who ought to be so entered, he shall forfeit not less than five nor more than one hundred dollars for every such offence. The lists so returned to the township clerks shall be open to public inspection.

General provision as to officer failing to do his duty under this act.

53. If any officer fail to perform any duty required of him by this act, and there is no other penalty or punishment imposed for such failure, he shall forfeit not less than five nor more than fifty dollars for every such offence.

Officer failing to attend election.

54. If any supervisor or inspector of election fail or refuse, without sufficient cause, to attend at the proper time and place for holding any election which it is his duty to assist in holding, he shall forfeit not less than five nor more than thirty dollars for every such offence.

Officer refusing to assist in election.

Or to return the ballots, &c.

55. If any officer whose duty it may be to assist in holding an election, being present at the time and place for holding the same, refuse to do so when required by a candidate or voter; or if any officer neglect or refuse to deliver the ballots, poll books, envelopes of absent voters, or certificates, as required by law, or to make returns in the manner or at the time prescribed by law, he shall forfeit for every such offence not less than ten nor more than one hundred dollars.

Officer taking bad votes or rejecting good ones

56. If an officer at an election knowingly and wilfully receive a bad vote, or reject a good one, or aid in so doing, he shall forfeit not less than fifty nor more than two hundred dollars for every such offence.

Making false return, &c.

57. If an inspector of election make or sign, or assist in making, any false certificate or return respecting an election, knowing the same to

Or declaration.

be false, or if a member of a board of supervisors assist or concur in making any false certificate, declaration or return respecting an election, knowing the same to be false, they, and every person aiding or abetting therein, shall each forfeit not less than three hundred nor more than one thousand dollars for every such offence.

No person to vote twice.

58. No person shall vote more than once in the same election; and he shall not vote a second time, although he may not have voted the first time for as many persons or officers as he might have lawfully voted for.

Persons voting when not entitled,

Or procuring false votes, &c.,

59. If any person knowingly shall vote when not legally entitled; or vote more than once in the same election; or procure or assist in procuring a bad vote to be admitted or received at an election, knowing the same to be bad, or a good vote to be rejected, knowing the same to be good; or with intent to deceive any voter alter the ballot of such voter by marking out the name of any person for whom such voter desires to vote; or with like intent write the name or names of any person or persons on such ballot other than those directed by the voter, he shall forfeit not less thirty nor more than one hundred dollars for every such offence.

Or counterfeit ballots of absent voters, &c.

60. Any person who shall knowingly procure, or attempt to procure, a false, counterfeit or altered ballot to be admitted or received at an election as and for the true ballot of a person absent in the service of the United States or this State, or knowingly aid, counsel or abet another or others in so doing; or procure, or attempt to procure, a bal-

lot to be admitted or received at an election as and for the ballot of a person absent in the service of the United States or of this State, knowing that such person is not, within the meaning of this act, entitled to vote at the said election, or knowing there is no such person as the one whose ballot it purports to be; or knowingly aid, counsel or abet another or others in so doing, shall forfeit not less than thirty nor more than one hundred dollars for every such offence.

Bribery.

61. If any person directly or indirectly give or promise to another, or convey, deposit or transfer for the use of another any money or property under an agreement, express or implied, that such other person shall vote or attempt to vote for a particular candidate or candidates at any election, the person so giving, promising, conveying, depositing or transfering the money or property, and the person so agreeing to vote or attempt to vote, shall each forfeit not less than fifty nor more than two hundred dollars for every such offence.

Betting on elections.

62. If any person bet or wager money or other thing of value on any election to be held under authority of the constitution and laws of this State or of the United States, he shall forfeit the value of such money or other thing, and fifty dollars in addition thereto, for every such offence.

Treating voters.

63. If any person, who is a candidate for any office under the constitution and laws of this State, shall, himself or by another, offer to or distribute among the voters gratuitously, any intoxicating drink on the day of the election, he shall, if elected, forfeit his office, and on proof of the fact be removed therefrom. Or if any other person offer gratuitously any intoxicating drink to any voter on the day of an election, he shall forfeit not less than ten nor more than fifty dollars.

Places for sale of liquors to be closed on election days.

64. Every place at which intoxicating liquors are sold shall be kept closed on the day when any election is to be held within two miles thereof. And if any person, whether licensed to sell intoxicating liquors or not, sell or offer or expose for sale any such liquor, or keep open any distillery, bar, office, stall or room in his possession or under his control at which such liquors had usually been sold, or permit any person to drink any intoxicating liquor at the same, on the day of an election and within two miles of the place of such election, or during the night succeeding such day, he shall forfeit not less than ten nor more than fifty dollars for every such offence.

Portions of the Code repealed.

65. The twenty-seventh and twenty-eighth sections of the seventeenth chapter of the Code of Virginia, second edition; the eleventh and fortieth sections of the one hundred and ninety-eighth chapter; and the fourth, fifth sixth, seventh, eighth, ninth and eleventh chapters, and the twelfth and thirteenth sections of the tenth chapter of the said Code, are hereby repealed.

CHAP. 101.—An ACT to povide for the Forfeiture of Property in this State, belonging to the enemies thereof.

Passed November 13, 1863.

Whereas certain persons, assuming to act in the name of the people of Virginia, have attempted to repeal the ratification of the constitution of the United States, and to deprive the people of West Virginia of the protection to which we are entitled under that instrument; and have endeavored by force of arms, and by pretended ordinances and acts of legislation threatening forfeiture and confiscation, imprisonment and death, to subject us to the authority of the so-called Confederate States of America; and whereas, because we have been unwilling to aid them in their effort to overturn the government under which we have heretofore lived and prospered, they have waged war against us, have encouraged conspiracies and insurrections in our midst, have excited desperate and unprincipled men among us to acts of robbery and murder, have declared us traitors and alien enemies, and, so far as they had power, have subjected to confiscation or forfeiture all property within this State belonging to those who support and uphold the lawful government of the land: therefore, Preamble.

Be it enacted by the Legislature of West Virginia:

1. Every person who shall aid or abet the so-called Confederate States of America, or the rebel state government at Richmond, in any invasion of this State or hostile action against the same; or who shall conspire with others to establish or maintain within this State, or any part thereof, the authority of the said Confederate States, or of the said rebel state government; or who shall accept, hold or exercise any office, commission or authority under the said Confederate States or the said rebel state government, shall be deemed for the purposes of this act, an enemy of this State; provided, that any person charged with being such enemy, may show in his defense that he acted under duress, or just fear of life, limb or personal liberty. What persons declared enemies of the state. Proviso.

2. All the estate, real and personal, of such enemy, which may be found in this State, including all lawful demands of such enemy against any person residing therein, or any corporation having a place of business in the same, shall be forfeited to the use of this State, subject, as hereinafter provided, to the just debts of such enemy. Property of such enemy forfeited.

3. It shall be the duty of every circuit court, upon its being made to appear that there is just cause to believe that an enemy of the state has property or claims subject to forfeiture, as aforesaid, to appoint some proper person a commissioner to take possession of, collect and administer the estate of such enemy, pursuant to this act. But of every motion for the appointment of such commissioner, the prosecuting attorney for the county where the motion is made shall have reasonable notice; and the court, in its discretion, may also require reasonable notice to be served on the attorney general, or any parties interested, by publication or otherwise; and award costs for or against any such party as may be right and proper. No such motion shall be made in the circuit court of any county, unless the property or claims so subject to forfeiture, or the greater part thereof in value be in such coun- Circuit court to appoint commissioner to administer estate of such enemy. Notice of motion for his appointment. Proviso.

ty. Where the court deems it proper, it may cause a jury to be impannelled to try any question of fact arising upon such motion.

Duty of prosecuting attorney and attorney general.

4. It shall be the duty of the prosecuting attorney, and attorney general, having notice, to see that the interest of the state is duly protected in regard to every such motion and all other legal proceedings under this act.

Commissioner's oath and bond.

5. Every commissioner so appointed shall take the oaths prescribed by the first and second sections of the act passed June twenty-sixth, eighteen hundred and sixty-three, entitled "An Act concerning oaths and affirmations;" and give bond to be approved by the court which appointed him, in a penalty equal, at the least, to the full value of the estate to be administered. He shall cause an inventory and appraisement of the estate to be made and filed, and shall state, return and settle his accounts in like manner as is required by law respecting the estates of persons dying intestate. The compensation to be allowed the commissioner shall be the same as that of an administrator. In reference to the personal estate, including debts and claims of the enemy committed to his hands to be administered, the commissioner shall, unless herein otherwise provided, have the same rights and authority, and be subject to the same liabilities as a personal representative of a deceased person in reference to the estate he represents; and all laws regulating the administration of the estates of deceased persons, shall, so far as they are consistent with this act, be deemed applicable to estates liable to forfeiture under this act.

Commissioner's duties.

Commissioner's pay.

Commissioner's authority.

Style of suit.

6. The commissioner may sue and be sued by the name and style of "A. B., commissioner of C. D., an enemy of the State."

Duties of commissioner.

He may convey real estate.

7. The commissioner shall take possession of all real estate of such enemy within this State, and lease, manage, sell and dispose of the same under direction of the court which appointed him. He may convey any of such real estate, but no sale or conveyance thereof shall be valid until reported to and confirmed by the said court. The conveyance of real estate by a commissioner appointed and qualified as aforesaid, shall, when confirmed by the court which appointed him, pass to the grantee all the right, title and interest therein of the person named as an enemy of the state in the order appointing such commissioner; and such conveyance shall not be impeached or invalidated by reason merely of any irregularity of proceeding.

Sale of personal estate by commissioner.

8. No sale of personal estate made by any such commissioner, or any payment made to him, shall be impeached or invalidated by reason merely of any irregularity of proceeding.

Revocation of commissioner's acts.

9. The court which appointed the commissioner may at any time, if it appear that the person named as an enemy of the state in the order of appointment was not justly charged as such, or for any other good cause shown, revoke such order and annul the authority of the commissioner; but such order, until so revoked, shall be deemed valid to all intents and purposes, and no conveyance or sale *bona fide* made shall be invalidated by any subsequent revocation of the authority of the commissioner.

10. No such commissioner shall pay any claim against the estate he represents, until the same be exhibited to the prosecuting attorney for the county where such commissioner was appointed, and such attorney being satisfied of the justice thereof, shall have endorsed his approval thereon. The prosecuting attorney, upon his account thereof verified by his affidavit, shall be allowed out of the estate, one dollar for every hour he shall necessarily be employed in investigating claims presented against such estate. But the commissioner may reject a claim though it was approved by the prosecuting attorney; and any claimant, whose claim has been, in whole or in part, disapproved by the attorney or rejected by the commissioner, may sue for and recover the amount unpaid against such commissioner out of the assets, if any, remaining in his hands to be administered.

Payment by commissioner of claims against estate of enemy.

Fee of prosecuting attorney.

Rejection of claims.

11. No claim shall be approved or paid, if the claimant be an enemy of the State, unless such claim be presented on behalf of a commissioner appointed under this act to administer the estate of such enemy.

Claims of one enemy of the state against another.

12. The commissioner, on his appointment, shall give notice in like manner as an executor or administrator, for all persons having claims against the estate he represents to present the same to him properly authenticated or proved, within six months from the date of his appointment. All just claims against the said estate shall be paid ratably and without preference to one over another, if the estate be not sufficient to pay the whole; but this shall not affect any lien already accrued. A commissioner who after the said six months distributes the money in his hands among the claims theretofore presented to him properly authenticated or proved, shall not be liable for any demand against the estate, in whole or in part, unless before such distribution he had notice thereof. Nothing in this act shall be construed to deprive any citizen of this State of the right to proceed against any enemy of the state, or the commissioner having charge of his estate, to recover damages for any injury to person or property caused by such enemy.

Commissioner's notice.

Payment of claims where estate is deficient.

Commissioner not liable after six months notice.

Right of citizen to proceed against enemy not affected.

13. Every commissioner shall within twelve months after his appointment, and once in every six months thereafter, until the estate he represents be fully administered and settled, cause his accounts therewith to be stated and settled; and when the balance in his hands, if any, is ascertained by or under direction of the proper court, shall, within thirty days thereafter, pay such balance into the treasury of the State, unless the court, for good cause shown, otherwise order. And if any claim against the estate remain unpaid which the assets remaining in the hands of the commissioner shall not be sufficient to satisfy, the legislature, on petition of the claimant, shall cause justice to be done out of the money received into the treasury from such estate, so far as the same may be sufficient.

Commissioner's settlements with estate.

Remedy to claimant in certain case.

14. When any settlement of the account of a commissioner appointed under this act is returned to the clerk's office of any court, and the balance due thereon is ascertained as aforesaid, it shall be the duty

Duty of clerks respecting account of commissioner.

of the said clerk, within thirty days, to transmit to the auditor his certificate of the amount in the hands of such commissioner, payable into the treasury of the state. If any clerk fail herein, he shall forfeit one hundred dollars.

Penalty for failure.

Failure of commissioner to render account

Punished.

15. If any commissioner appointed under this act fail to cause his account to be stated and settled as aforesaid, or to pay as aforesaid any amount he may have in his hands payable into the treasury of the State, he and his sureties shall be liable for the principal sum in arrear, with interest thereon at the rate of fifteen per centum per annum from the time such payment should be made until paid, and costs, to be recovered as money due the State is recoverable from sheriffs and their sureties.

Preamble.

16. And whereas, many persons, who on or after the seventeenth day of April, eighteen hundred and sixty-one resided within what is now the state of West Virginia, have deserted their homes and are actively engaged in aiding the so-called Confederate States of America and the rebel state government at Richmond, in their attempt to subjugate the good people of this State, but in consequence of the war evidence of their rebellious and criminal acts cannot be obtained: It is, therefore, hereby further enacted, that it shall be lawful for the governor, from time to time, to issue his proclamation declaring any person or persons named therein who he may have good cause to believe have so deserted their homes and are engaged as aforesaid, or are absent from their former places of abode, enemies of this State, unless they shall, within sixty days from the date of said proclamation, take and file in the clerk's office of the circuit court of their county an oath to support the constitution of the United States and the constitution of this State, and thereafter demean themselves as good citizens; which proclamation shall be published in some newspaper printed at the seat of government, and in such other newspaper or newspapers as the governor may direct. And after the expiration of the said sixty days the production of a copy of such proclamation certified by the secretary of the state under the lesser seal of the state, and an affidavit of such proclamation having been published as aforesaid, shall be *prima facie* evidence that the person or persons therein named are enemies of the state within the meaning of this act, unless it be shown that they have taken the oaths above mentioned and so demean themselves. But such persons may nevertheless be proved to be enemies of the state within the meaning of this act by other competent evidence afterwards obtained.

Proclamation by governor declaring persons enemies of the state,

Unless they take an oath.

Certified copy of proclamation to be evidence against them,

Unless they have taken the oath.

Liability to conviction upon other and subsequent evidence.

Attempts to evade this act.

17. Every sale, conveyance or transfer of property, real or personal, or assignment or payment of a debt, and every encumbrance or lien created on any property or debt, and every act done or contract entered into, with intent to evade the forfeiture of any property or claim under this act, or to secure the same, or the price or proceeds thereof, in whole or in part, to or for the benefit of any enemy of the state, shall be void.

Duty of sheriff in such case.

18. It shall be the duty of the sheriff, whenever he shall have good cause to believe that any property within his county, belonging to an enemy of the state, has been or is about to be sold, transferred, conveyed, removed or secreted with intent to evade the forfeiture thereof, or secure the same, or the price or proceeds thereof, in whole or in part, to or for the benefit of any enemy of the state, to cause such property to be seized and safely kept until it can be delivered to a commissioner authorized to administer the estate of the enemy to whom such property belonged.

Plea in court against enemy,

Or proof before justice.

Motion of enemy (when proven such), dismissed,

And execution o judgment arrested.

Recovery by commissioner not affected.

19. In any suit at law or in equity before a court of record, it shall be a good plea or answer, that the plaintiff was, at the commencement of the suit, an enemy of this State within the meaning of this act; or if the suit be before a justice, the same matter may be proved in defense of the action on reasonable notice given to the plaintiff or his agent, or filed with the justice. On any motion in a court of record, if after reasonable notice given to the plaintiff or his attorney, or filed with the clerk of such court, that such a defense would be made, it be shown to the satisfaction of the court that the plaintiff in the motion is an enemy of the state within the meaning of this act, such motion shall be thereupon dismissed by the court; and the circuit court having jurisdiction shall, on bill in chancery and proper evidence in support thereof, enjoin the execution of any judgment, decree or deed of trust, but so far only as it may appear that the same is about to be executed for the benefit of any person who is an enemy of the state within the meaning of this act. Nothing contained in this section shall, however, be construed to interfere with or prevent the recovery of any property or claim by or in behalf of any commissioner appointed under this act.

CHAP. 102.—An ACT to incorporate the Bellton and Wetzel County Turnpike Company.

Passed November 14, 1863.

Be it enacted by the Legislature of West Virginia:

Purpose of the act.

1. For the purpose of constructing a turnpike road from Bellton, in the county of Marshall, to the Wetzel county line, near the residence of Thomas W. Gorby, where the county road crosses the county line, it shall be lawful to open books in Bellton for receiving subscriptions to an amount of not over one thousand dollars, to be divided into shares of ten dollars each.

Names of Commissioners.

2. The said books shall be opened under the direction of Donald Franklin, Samuel Reed, Michael Piles, Thomas Butler and John Bell, at such times as they, or any three of them, or any agents appointed by any three of them, may select.

Amount of subscription required to establish company.

Style of company

How governed.

3. Whenever twenty shares shall have been subscribed, the subscribers, their executors, administrators and assigns shall be a body corporate, by the name of "The Bellton and Wetzel County Turnpike Company," in strict conformity to all laws of the state of West

Virginia regulating such companies, with all the powers and subject to all the restrictions imposed by said laws, so far as said laws may be compatible with this act; but said company shall not be required to construct any summer or side-road, nor to pave nor cover their said road with stone or gravel, and the width of said road may be not less than fourteen feet, and the grade not to exceed six degrees. Said company shall have the right (in addition to other routes) to locate or construct the said road on or near the location of the present county road.

Width and grade of road.

CHAP. 103.—An ACT to construe and give effect within this State to certain provisions of the Laws of Virginia.

Passed November 14, 1863.

Be it enacted by the Legislature of West Virginia:

Certain expressions in the laws of Virginia construed in reference to this state

1. Wherever the words "Commonwealth of Virginia," or "State of Virginia," or any expression used to designate the said State occur in any provision of the Code of Virginia, second edition, or of the acts of the general assembly thereof, in force within the limits of this State on the nineteenth day of June, eighteen hundred and sixty-three, such provision, in its application to this State, shall be construed as if, instead of the said words or expression, the words "State of West Virginia," were inserted therein. In like manner where the words "oath of fidelity," "general assembly," "attorney for the commonwealth," "auditor of public accounts," "commissioner of the revenue," or any equivalent expressions occur in the said Code or acts, they shall be construed, so far as they are applicable to this State, as if the oath to support the constitution of the United States and the constitution of this State, the legislature, prosecuting attorney, auditor and assessor, respectively, were thereby intended. And the said provisions thus construed, if not otherwise repugnant to the constitution of this State or the acts of the legislature, shall be and continue in force as laws of this State. But this act shall not be held applicable to any provision of the said Code or laws of Virginia which has been amended and re-enacted or altered by this legislature, nor shall it revive any provision that has been repealed.

Laws amended or altered not affected.

CHAP. 104.—An ACT to incorporate the Burning Spring Turnpike Company.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

Purpose of act.

1. It shall be lawful to open books for receiving subscriptions to an amount not exceeding five thousand dollars, to be divided into shares of twenty-five dollars each, for the purpose of constructing a graded turnpike road from the termination of the Newark and Elizabethtown turnpike, opposite Elizabethtown in the county of Wirt, to a point at or near the mouth of Burning Spring run, with the privilege of extending the same to a point opposite the mouth of the west fork of the Little Kanawha river, all in the same county.

2. The said books shall be opened at Rathbone City, under the direction of Richard D. Petty, John Weare, and Godwin Van Winkle; at Elizabethtown, under the direction of Marcus L. Lockhart, William D. Wilkinson, and Edward C. Hopkins; at Newark, under the direction of Jesse Worley, Thomas P. Fought, and Benjamin F. Stewart; and at Parkersburg, under the direction of J. C. Rathbone, Samuel Newberger, and James W. Dils, or any one or more of them, and at such other places and under the direction of such persons as a majority of the above named commissioners may appoint. Names and places of commissioners.

3. When forty shares of the said capital stock shall have been subscribed for, the subscribers, their executors, administrators and assigns shall be incorporated into a company by the name and style of the Burning Spring Turnpike Company, subject to the provisions of chapters fifty-six, fifty-seven and sixty-one of the Code of Virginia, second edition; but the said company shall have the privilege of making the said road, or any part thereof, with gravel, sand, clay or plank, as to them shall seem most expedient. Amount of subscription required to establish company. Style of company and how governed.

4. The said road shall be opened not more than thirty feet in width and graded not less than twelve feet wide on hill sides and in cuts, and not less than eighteen feet wide in all other places, and shall be constructed at grades nowhere exceeding four degrees of elevation. Tolls may be collected on any continuous section of four miles of the said turnpike road, as soon as the same shall be completed and opened to the public. Width and grade of road. Tolls.

5. So much of the first section of the act entitled "An Act to incorporate the Burning Spring and Oil Line Turnpike Company," passed by the general assembly of Virginia, March 11, 1861, as is inconsistent with this act, is hereby repealed. Law repealed.

CHAP. 105.—An ACT to amend the Act providing for the formation of Corporations and regulating the same.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

1. Any existing corporation which shall, under the twelfth section of the act providing for the formation of corporations and regulating the same, passed October twenty-sixth, eighteen hundred and sixty-three, accept the provisions of the said act, may change the par value of its shares as the stockholders thereof in general meeting may determine, subject to the regulation contained in the third section of the said act; and in such case, the statement to be filed with the secretary of the state, under the said twelfth section, shall show the proposed par value of each share. Existing corporations authorized to change the par value of their shares of stock,

2. The stockholders of any corporation which may be formed under the said act or accept the provisions thereof, may, by by-law adopted in general meeting, provide that every share of stock shall have one vote in meetings of stockholders, notwithstanding anything to the contrary contained in the twenty-second section of the said act. And prescribe its representation.

Increase of capital or change in par value of stock

3. If the stockholders of any corporation now existing in this State, excepting banks of circulation and companies incorporated for the construction of works of internal improvement, or of any corporation which may be formed under the said act, desire to increase the amount of its capital stock or change the par value of its shares, and shall pass in general meeting a resolution to that effect, stating the proposed increase or change, the president of the corporation shall thereupon, under his signature and the common seal of the said corporation, certify the resolution to the secretary of the state; and the secretary, under his hand and the great seal of this State, shall issue a certificate reciting the said resolution and declaring the proposed increase or change to be authorized in law; which certificate shall be received in all courts and places as legal evidence of the change of the par value of the shares, or the authority to increase the capital stock therein declared. But the capital stock shall not be thereby increased so as to exceed in the whole one million of dollars, and the par value of the shares shall be subject to the regulation contained in the third section of the said act.

How effected.

Limit of capital.

Restriction as to value of stock.

Real estate of existing corporations.

4. The provisions of the twentieth and twenty-first sections of the above mentioned act of October twenty-sixth, eighteen hundred and sixty-three, in relation to the quantity of real estate which the corporations subject to said act may hold, shall be extended so as to apply to all corporations now existing in this State, except banks and internal improvement companies, the charters of which may be altered or amended by the legislature.

CHAP. 106.—An ACT to amend and re-enact the first section of an act entitled "An Act concerning Oaths and Affirmations," passed June 26, 1863.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

The first section of the act entitled "An Act concerning oaths and affirmations," passed June 26, 1863, shall be amended and re-enacted so as to read as follows:

Amended oath of office.

1. Every person elected or appointed to any office of trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, take the following oath: "I, A. B., do solemnly swear that I will support the constitution of the United States and the constitution of this State; that I have never voluntarily borne arms against the United States; that I have voluntarily given no aid or comfort to persons engaged in armed hostility thereto, by countenancing, counseling or encouraging them in the same; that I have not sought, accepted nor attempted to exercise the functions of any office, whatever, under any authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto; and that I take this obligation freely, without any mental reservation or purpose of evasion."

CHAP. 107.—An ACT to provide for Taxes on process in Suits, Official Seals and Deeds.

Passed November 16, 1863.

Be it enacted by the Legislature of West Virginia:

Suits, appeals, &c to be taxed.

1. There shall be a tax paid when suit is commenced in a circuit court; or when an appeal, writ of error, or supersedeas is commenced in the supreme court of appeals.

Seals of public officers.

2. There shall be a tax when the seal of a court, a recorder or notary public, or the seal of the state, is annexed to any paper, except in cases hereinafter provided for.

In what cases, seals not to be taxed.

3. No tax shall be charged when a seal is annexed to any paper or document to be used in obtaining the benefit of a pension, revolutionary claim, money due on account of military services, or land bounty, under any act of congress, or any law of this or any other state, or when a seal is annexed by a notary public to an affidavit or deposition; or when the seal of the state is annexed to any commission or certificate required by the "Act to regulate elections by the people."

Deeds.

4. There shall be a tax on deeds; and no deed shall be admitted to record until the tax thereon is paid to the recorder; except on deeds conveying land as a site for a public school-house, church, parsonage, cemetery or burial-ground, on which there shall be no tax.

To whom such taxes to be paid.

5. The taxes on process and on seals of courts shall be paid to the clerks, respectively, of the courts from which such process is issued, or whose seal is used. The tax on the seal of a recorder shall be paid to such recorder. The tax on the seal of a notary public shall be paid to such notary; and that on the seal of the state to the secretary of the state.

Account of same to be returned quarterly.

6. The clerk of each circuit court, and every notary public and recorder, shall make out quarterly, on the first days of January, April, July and October, respectively, in each year, an account of the taxes received by him. Each of the said officers shall swear to the correctness of the said account; and shall pay the amount thereof for county purposes to the treasurer of the several counties wherein the said taxes have accrued, deducting therefrom a commission of three per centum for receiving and paying the same. The secretary of the state and the clerk of the supreme court of appeals shall make their returns quarterly, under oath, to the auditor, on the days above specified, and pay the amount appearing thereby to be due into the treasury of the state, after deducting a commission of three per centum.

In what cases paid to county treasury.

In what cases to state treasury.

Penalty for failure to return the accounts.

7. If any of the said officers fail to render such accounts within thirty days after they are respectively required to do so, there shall be a forfeiture as follows: A clerk so failing shall forfeit two hundred dollars, a notary public, one hundred dollars, a recorder, fifty dollars, and the secretary of the state, one hundred dollars; and for every month that such failure may continue thereafter, there shall be an additional forfeiture of ten per centum of the amount thereof. For any such failure, motions may be repeated from time to time so long as

it continues against any of the officers and their sureties in the circuit court of the county in which the officer resides; but a motion against the secretary of the state, or the clerk of the supreme court of appeals, shall be in the circuit court of the county in which the seat of government is.

Pay of delinquent withheld.

8. None of the aforesaid officers shall receive any money from the treasury into which he is required to make such payment, until he shall have rendered such accounts and made such payments as are above required.

Chap. 39 of Code repealed.

9. Chapter thirty-nine of the Code of Virginia, second edition, is hereby repealed.

CHAP. 108.—An ACT providing for rebuilding the bridge across Buffalo Creek, at Barnsville, in Marion county.

Passed November 18, 1863.

Be it enacted by the Legislature of West Virginia:

Commissioners.

1. The superintendent of the Maryland and Ohio river turnpike, and two citizens of Marion county to be appointed by the governor, are hereby authorized to act as commissioners to contract for and superintend the rebuilding of the bridge across Buffalo creek, at Barnesville, on the Maryland and Ohio river turnpike. A majority of said commissioners can act.

Appropriation.

2. The sum of eighteen hundred dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the rebuilding of the said bridge, and for the purpose of paying for the said work as it progresses. The said commissioners are authorized to draw on the auditor, who is hereby required to pay such orders to the amount of the said appropriation.

CHAP. 109.—An ACT providing for the payment of certain Militia Claims allowed by Regimental Courts.

Passed November 19, 1863.

Be it enacted by the Legislature of West Virginia:

What claims to be paid.

The auditor is hereby required to pay all militia claims for services rendered since June twentieth, eighteen hundred and sixty-one, as musician, adjutant, provost marshal, and regimental clerk, which have been allowed by regimental courts of the several regiments within the bounds of this State, and are duly certified by the regimental clerks, and countersigned by the commandants, of the regiments, according to law.

CHAP. 110.—An ACT relating to the Militia.

Passed November 21, 1863.

Be it enacted by the Legislature of West Virginia:

Divisions and brigades.

1. There shall be two divisions and eight brigades of the militia of this State.

2. The first division shall be composed of the first, second, third and fourth brigades, to wit: Hancock, Brooke, Ohio and Marshall shall be the first brigade; Tyler, Wood, Ritchie, Pleasants, Doddridge, Wirt and Wetzel the second brigade; Monongalia, Marion, Harrison, Taylor and Preston the third brigade; Morgan, Berkeley, Jefferson, Hampshire, Hardy, Pendleton, Webster, Randolph and Tucker the fourth brigade. First division. First brigade. Second brigade. Third brigade. Fourth brigade.

3. The second division shall be composed of the fifth, sixth, seventh, and eighth brigades, to wit: Lewis, Upshur, Gilmer, Calhoun, Braxton and Barbour shall compose the fifth brigade; Monroe, Greenbrier, Pocahontas, Fayette, Clay and Nicholas the sixth brigade; Kanawha, Mason, Cabell, Wayne, Jackson, Roane and Putnam the seventh brigade; Logan, Boone, Wyoming, McDowell, Mercer and Raleigh the eighth brigade. Second division. Fifth brigade. Sixth brigade. Seventh brigade. Eighth brigade.

4. The governor shall have power to remove any officer of the militia that now is or that may be hereafter commissioned, and may refuse to commission any officer hereafter elected, upon satisfactory evidence that such officer is disloyal, intemperate or incompetent, or for any behavior unbecoming an officer. Authority of governor.

CHAP. 111.—An ACT relating to Convicts.

Passed November 25, 1863.

Be it enacted by the Legislature of West Virginia:

The governor is hereby authorized to have removed to the penitentiary of any other state of the Union, if he can negotiate with the proper authorities of such state on satisfactory terms, all convicts now in the jails of this State, who have been convicted under the re-organized government of Virginia or the government of this State, and all who may hereafter be convicted in this State, until arrangements have been made by it for their safe keeping within its limits. Governor authorized to remove convicts to penitentiaries of other states.

CHAP. 112.—An ACT regulating Contested Elections.

Passed November 27, 1863.

Be it enacted by the Legislature of West Virginia:

1. Any person intending to contest the election of another as senator or delegate shall, within twenty-one days after the election, give him notice thereof in writing, and a list of the votes he will dispute, with his objections to each, and of the votes rejected for which he will contend. If the contestant object to the legality of the election or the qualifications of the person returned, the notice shall set forth the facts on which such objection is founded. The person whose election is contested shall, within fourteen days after he receives such notice, deliver to the contestant a like list of the votes he will dispute, and of his objections to each, and of the rejected votes he will claim; and if he has any objection to the qualifications of the contestant, shall specify in such notice the facts on which the objection is found- Notice of intention to contest, With list of votes objected to and contended for. Return notice with like list.

Notices to be sworn to.

ed. Each party shall append to his notice his affidavit that the matters therein set forth, so far as they are stated of his own knowledge, are true, and so far as they are stated on the information of others, he believes them to be true.

Time of giving notice in case of special election to fill vacancy.

2. Where, however, such contest arises upon a special election to fill a vacancy held at any other time than the fourth Thursday of October, the notice, with specifications and affidavit as above, shall be given by the contestant within ten days after the election, and by the party whose election is contested within five days after receiving such notice.

Additional notice.

3. If new facts be discovered by either party, after he has given notice as aforesaid, he may give an additional notice or notices to his adversary, with specifications and affidavit as above prescribed; but no testimony shall be taken concerning the matters alleged in such additional notice or notices, until five days at least after the delivery thereof to the opposite party.

Time of taking depositions.

4. Subject to the provision contained in the last section, either party may begin to take depositions at any time after the delivery of the

Notice of each deposition.

original notice by the contestant. But reasonable notice of every such deposition shall be given in the manner prescribed in the one hundred and sixty-seventh chapter of the Code of Virginia, second edition;

Specifications of such notice.

and every such notice shall specify the names of the witnesses to be examined, and the particular vote or votes about which they will be interrogated, or whether they are to be examined respecting the legality of the election, or the qualifications of the contestant or person returned.

Before whom depositions taken,

The depositions may be taken before a justice, notary or any officer authorized to take depositions in civil suits; and the officer

And how disposed of.

before whom they are taken shall certify and seal up the same, and endorse his name across the place where they are sealed, and address and transmit the same by mail or otherwise to the clerk of the branch in which the seat is contested. When the petition of the contestant is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report.

Witnesses.

5. Subpœnas for witnesses shall be issued by the clerks of the circuit courts, upon application of either party; and the witnesses so summoned shall be entitled to the same allowances and privileges, and be subject to the same penalties as witnesses summoned to attend the said courts.

Time of completing depositions in case of regular elections,

6. If the contest arise respecting any election held on the fourth Thursday of October, the parties shall finish taking depositions ten days at least before the third Tuesday of January next following. But

In case of special election.

if it arise upon a special election to fill a vacancy held at any other time, they shall finish within twenty-one days after the election.

7. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the Legislature.

Petition of contestant to Legislature.

8. The petition of the contestant shall be presented to the proper branch of the legislature within ten days after its meeting, if the dis-

puted election was held at the regular annual period; or if it was a special election to fill a vacancy, within twenty-five days after such election.

Case of tie.

9. If it be ascertained that an equal number of legal votes was given for the petitioner and the person returned, the seat shall be declared vacant, and a writ of election be issued to fill the vacancy as in other cases.

Time for giving notice in contests under election held October 22, 1863.

10. If any contest arise respecting the election of any person as senator or delegate, at the election held on the fourth Thursday of October last, it shall be governed by the provisions above contained, except that the contestant may give his notice within twenty-one days after the passage of this act, instead of twenty-one days after the election.

Time for giving notice in contest for state officers.

11. If the election of governor, secretary of the state, treasurer, auditor, attorney general, judge of the supreme court of appeals, or judge of a circuit, be contested, the contestant must give notice, with specifications and affidavit as aforesaid, to the person whose election is contested, within ten days after the result is officially declared; and within ten days thereafter the return notice must be given to the contestant. The parties shall finish taking depositions within forty days after the last mentioned notice is delivered. The depositions shall be transmitted to the clerk of the house of delegates, to be delivered by him to the joint committee or special court hereinafter provided for. In other respects, the regulations herein contained respecting contests for seats in the legislature shall be observed, so far as they are applicable.

When depositions in such case must be completed.

Other regulations.

Trial of contest for office of governor.

12. Where the election of governor is contested, the petition of the contestant and the depositions shall be referred to a joint committee of the two branches, for examination and report; which committee shall consist of two senators elected by ballot by that branch, and three delegates elected by ballot by the house of delegates. The contest shall be determined by the legislature, both branches thereof sitting in joint session in the hall of the house of delegates, the speaker of which house shall preside.

Special court in case of contest for other state offices.

13. Where the election of secretary of the state, treasurer, auditor, attorney general, or a judge of the supreme court of appeals or circuit court is contested, the case shall be heard and decided by a special court to be constituted as follows: The person declared elected shall select one, the contestant another, and the governor a third person, who shall preside in the said court; and the three, or any two of them, shall meet at a time and place to be appointed by the governor, and being first duly sworn impartially to decide according to the law and the truth upon the petition, returns and evidence to be submitted to them, shall proceed to hear and determine the case and certify their decision therein to the governor. They shall be entitled to the same pay and mileage as members of the legislature, to be paid out of the treasury of the State; but their compensation shall not in any case exceed forty-five dollars each, exclusive of mileage.

Costs, 14. The costs of every contested election shall include only the expenses of serving notices, taking the depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions by the person taking the same. If the contestant fail in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the branch, joint session or court which decides the case, and a certificate thereof authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment; and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate upon its delivery to him, in like manner as upon a judgment of the said circuit court.

How awarded.

How ascertained

How recovered.

Contests for county and township offices. 15. If the election or qualifications of any county or township officer be contested, the question shall be decided by the board of supervisors of the county, under the regulations prescribed in the thirty-first and thirty-second sections of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "An Act to regulate elections by the people."

If upon election heretofore held. 16. If such contest arise respecting any election heretofore held for any county or township office, the first board of supervisors elected for the county may proceed to hear and determine the same at a meeting or meetings to be held for the purpose, at any time within thirty days after the election of the said board.

Law repealed. 17. The tenth chapter of the Code of Virginia, second edition, is hereby repealed.

CHAP. 113.—An ACT concerning Licenses.

Passed November 28, 1863.

Be it enacted by the Legislature of West Virginia:

For what licenses shall issue. 1. No person shall, without a license therefor, keep a hotel or tavern; or sell drinks or refreshments at a public theatre; or sell, or offer or expose for sale, at retail, spirituous liquors, wines, porter, ale or beer, or any drink of like nature, and selling in less quantities than five gallons shall be deemed selling at retail; or keep for public use or resort a bowling alley or saloon, billiard table or any table of like kind; or exhibit any circus, menagerie, theatrical performance or public show to which admission is obtained for money or other re-

Selling liquors at retail.

Bowling alley or billiards.

Circus, Menagerie, Theatre, Public show.

ward; or practise in this State, if not a resident therein, the profession of dentist, or the art or business of daguerrean or photographist, or other art or business of like kind. Nor shall any person, without a license therefor, sell, or offer or expose for sale, any patent right, except where the patentee is a resident of this State; or act as a hawker and peddler, or itinerant vender of goods, wares or merchandize, or as auctioneer; or practise the business or calling of stock or other broker in buying or selling for others, stocks, secureties or property of any kind, for a commission or reward; or act as a broker or private banker in carrying on for himself or any other person or persons the business of buying or selling uncurrent money or funds, or exchanging one kind of money or funds for another. Any person violating this section shall, for every such offence, forfeit not less than ten nor more than one hundred dollars.

Non-resident dentist or photographist.

Patent rights.

Hawker and peddler.

Stock broker.

Private banker.

Money and exchange broker.

Penalty.

2. This act shall not be construed to require license to keep a boarding-house or boarding-school where boarders are not received for less than three days; or to require any person having license to sell spirituous liquors or wines at retail, to obtain another license to sell porter, ale or beer, or any drink of like nature, at the same place; or to prohibit a druggist from selling alcohol, spirituous liquors or wine for medicinal or manufacturing purposes; or to require any incorporated bank, savings bank or savings institution to obtain license as a broker or private banker; or to require any resident of this State to obtain license to exhibit any work or production of his own invention or skill; or to require license for any school exhibition, literary or scientific lecture, or musical concert; or to affect any person furnishing refreshments at any public dinner, fair, festival or celebration; or to require any trustee selling property, or any officer or commissioner selling property under an order, decree or execution of any court or justice, to take out license therefor.

Proviso respecting boarding houses, and retailers of liquors,

And druggists,

And bankers as brokers,

And residents of state exhibiting their own work,

And school exhibitions; lectures and concerts; and refreshments at public dinner and other places.

And trustees, &c; selling property,

3. Where the council of a city or town is, by its charter or any law of this State, authorized to grant or refuse licenses for any particular purpose, no license issued under this act shall be deemed to authorize any person to do any act, or carry on any business, calling or profession within the corporate limits of such city or town without having obtained license therefor as required by the by-laws or ordinances of such city or town, but all licenses granted under such by-laws or ordinances shall be assessed with and pay to the state the same taxes as other licenses of like kind, in addition to any tax payable thereon to such city or town.

Where council of city or town authorized to grant license, no other license valid.

State tax on licenses granted by city or town.

4. Licenses to keep a hotel or tavern; or to sell drinks or refreshments at a public theatre; or to sell at retail spirituous liquors, wines, porter, ale, beer, or any drink of like nature; or to keep for public use or resort a bowling alley or saloon, billiard table or table of like kind, shall be issued only when authorized by resolution of the board of supervisors of the county, except where the council of a city or town are authorized, as aforesaid, to grant such licenses, in which case they shall be issued only when authorized by such council.

What licenses to be issued only when authorized by board of supervisors.

When licenses issued only by council of city or town.

License to keep a hotel or retail liquors, how procured.

5. Every person desiring license to keep a hotel or tavern, or to sell at retail spirituous liquors, wines, porter, ale, beer, or any drink of like nature, where such license is to be authorized by a board of supervisors under the preceding section, shall procure a certificate from the said board that he is of good moral character and demeanor, and not of intemperate habits, and in all cases where a license grants the privilege to sell spirituous liquors, wines, or any drink of like nature, shall

Bond.

execute a bond, with security, to be approved by the said board, in a penalty of not less than five hundred nor more than one thousand dollars, conditioned that he will not permit any person to drink to intoxication on any premises controlled by such applicant, and will not sell or furnish any intoxicating drink to any person intoxicated at the time, or who is known to have the habit of becoming intoxicated, or

Refusal.

to any person under the age of twenty-one years, or on Sunday. If such certificate be applied for and refused, the refusal shall be entered of record, and such certificate shall not be afterwards granted to the applicant before the meeting of the board in the succeeding May or June.

When suit may be instituted on bond.

6. Upon credible complaint in writing made to him, or on his own knowledge, of any breach of the condition of such bond as is mentioned in the fifth section, the prosecuting attorney of the county shall,

Amount to be recovered for use of county.

from time to time, put the same in suit, and recover for each breach the sum of ten dollars for the use of the county, until the penalty is exhausted.

Revocation of licenses,

On reasonable notice.

7. Upon the petition in writing of any inhabitant of the county, city or town, any license authorized according to the fourth section of this act, may be revoked by the board or council who authorized it, on reasonable notice to the person holding the same; and thereafter such license shall be of no effect to protect the person holding the same from any fine or forfeiture imposed by the first section of this act.

Agents of express or foreign insurance companies acting without license, fined.

8. Every person who, after the first day of February in any year, shall commence and carry on any express business for compensation, or act as agent for any express company, or act as agent of any foreign insurance company, without a license therefor, shall, for every such offence, forfeit not not less than five dollars nor more than fifty dollars. Such license shall expire on the first day of February next after the date thereof, and the tax thereon shall be in proportion to the time it has to run from the granting thereof. If the business or agency be continued after the expiration of such license, no further license shall be necessary, but such business or agency shall be assessed and listed for taxation according to the provisions of the act passed at the present session, entitled "An Act to provide for the assessment of taxes."

When such license to expire. Tax thereon to be in proportion to time.

How such business is to be taxed after first year

Assessors to list persons engaged in business requiring license.

9. Every assessor shall, annually, ascertain and list all persons in his district who are engaged or desire to engage in any business, calling or profession for which license is required by law; and it shall

Such persons to report to assessor

be the duty of every such person to apply to the assessor and cause himself to be properly listed; and if the case be one in which the

license is to be authorized by the board of supervisors of the county or the council of the city or town, it shall further be his duty to deliver to the assessor a copy of the resolution of the board or council authorizing the same, authenticated by the signature of their clerk. The assessor shall deliver to every person in his district, from whom license is required by law, and who, where this is necessary, shall deliver a copy of the resolution of the board or council authorizing such license, a certificate of the license to be obtained, and of the amount of tax to be paid thereon to the state. Such certificate shall be produced to the officer to whom the tax is to be paid, and his receipt for the tax, written thereon, shall be a sufficient license to the person and for the purpose mentioned in the said certificate, subject to the exception mentioned in the third section of this act. The tax due the state shall be paid to the officer authorized at the time to collect the State taxes assessed for that year in the county,

Resolution of supervisors or council of city or town to be delivered to assessor.

Certificate of license to be produced to collecting officer, whose receipt thereon to constitute license.

Exception.

Payment of state tax on license.

10. Every certificate issued by an assessor as aforesaid, if it be to authorize the keeping of a hotel or tavern, or a bowling alley or saloon, billiard table or any table of like kind for public use or resort, shall specify the building in which it is to be kept; and to keep the same at a different place shall be deemed a violation of the first section of this act. Every certificate to sell at retail spirituous liquors, wines, porter, ale or beer, or any drink of like nature, or to sell drinks or refreshments at a public theatre, shall designate the house where they are to be sold, and a sale at any other place shall be held to be a sale without license. Other licenses shall be deemed co-extensive with the county, but of no effect beyond the limits of such county.

What certificate of assessor to specify.

Place of sale named in certificate not to be changed in certain cases.

Other licenses co-extensive with the county.

11. Where an assessor desires to obtain license, he shall procure a certificate therefor from the board of supervisors of the county, or council of the city or town, as the case may be, and produce the same and pay the tax thereon to the proper officer, whose receipt thereon shall have the same effect as in other cases.

How an assessor can obtain license.

12. The State tax on a license to keep a hotel or tavern shall be determined by the yearly value of the premises occupied for that purpose. The assessor may require the proprietor and tenants, if the premises be leased or rented, to declare on oath the amount of rent agreed to be paid, and if either of them refuse to do so, he shall forfeit not less than twenty nor more than one hundred dollars. From such information, if obtained, and a comparison of the premises, where it is in his power, with other premises actually leased or rented, and other circumstances affecting the value, the assessor shall estimate the yearly value to the best of his judgment, taking into consideration not only the house itself, but all the lots, gardens, stables, outhouses, booths and watering places held and used therewith, but excluding the contiguous farm and farm-houses.

How the state tax on license to keep a hotel, determined.

Assessor to estimate yearly value.

Contiguous farm excluded from valuation.

13. If the person desiring a license of any kind be dissatisfied with the valuation of the assessor or the amount of state tax to be paid as stated in the assessor's certificate, he may appeal to the board of supervisors of the county, whose decision shall be final. If the decision

Appeal from assessor's valuation,

To board of supervisors.

be that the valuation or amount of tax should not be reduced, the person so appealing shall pay five dollars to the county treasury as costs of such appeal.

Costs of appeal in case of failure.

State license a personal privilege, But may be transferred.

14. A license from the State shall be considered a personal privilege; but the person to whom such license has been granted may transfer the unexpired term thereof, with the assent of the board of supervisors of the county or the council of the city or town who authorized it to be issued, if the license be one of those mentioned in the fourth section of this act, and the person to whom it is transferred shall give bond as required by the fifth section, and in other cases, by procuring from the assessor an endorsement on the license, showing to whom it has been transferred. Where such transfer is made with the assent of the board or council, their clerk shall endorse a memorandum of the transfer on the license, and forthwith make report thereof to the assessor.

Bond to be given by the person to whom transferred.

Clerk of board or council, to report transfer to assessor.

Place where privilege to be exercised may be changed,

By the board of supervisors, or council of city or town,

Or by assessor.

15. If a person having license from the State to keep a hotel or tavern, or a bowling alley or saloon, billiard table or any table of like kind, in a particular building, or to sell at a specified house, as provided in the ninth section of this act, desires to keep the same, or sell, at a different place in the same county, the board of supervisors of the county, or council of the city or town, who authorized the license to be issued, may, if it be one of those specified in the fourth section of this act, and the assessor may in other cases, authorize such license to be altered accordingly, and a memorandum of the change of place to be endorsed thereon. When such alteration is authorized by the board or council, their clerk shall forthwith make report of the same to the assessor.

Clerk of board or council to report change of place to assessor.

Fee to clerk for transfer or change.

Clerk to prepare bond.

Fee to assessor for transfer or change.

16. The applicant shall pay to the clerk of the board of supervisors a fee of fifty cents for every license, transfer or alteration of a license granted or authorized by the said board; in consideration of which it shall be the duty of the clerk to prepare the bond required by the fifth section of this act. The assessor shall also, in every case, be entitled to a fee of fifty cents for each license, transfer or alteration of a license, to be paid by the person obtaining the same.

Duration of state license to keep bowling alley or billiard table.

Tax when for four months.

17. A license from the State to keep, for public use or resort, a bowling alley or saloon, billiard table or any table of like kind, may commence at any time in the year, and be for the period of either four or twelve months from the time of granting the same. If for four months, the tax shall be one half of the annual tax.

State tax on theatres,

And on a circus, menagerie or public show.

Sundry state licenses.

18. There shall be a state tax per week on theatrical performances to which admission is obtained for money or other reward; and a state tax on every circus, menagerie, or public show, to which admission is obtained as aforesaid, for each day's exhibition. The state license to authorize a person not a resident of this State to practise the profession of dentist, or the art or business of daguerrean, photographist or other art or business of like nature; the State license to sell patent rights, and State licenses to hawkers or peddlers or itinerant venders of goods, wares or merchandize, or to auctioneers, may com-

mence at any time, and be for a year or one or more months, but not for a fraction of a month. If for less than a year, the state tax for every month shall be one eighth of the annual tax. Their commencement and duration.

19. All the State licenses, except those mentioned in the last two sections and in the eighth section, shall expire on the thirtieth day of June; and if granted for a less term than one year, the State tax thereon shall bear such proportion to the whole annual tax, as the space of time between granting the same, and the thirtieth of June thereafter bears to the whole year. General provision as to expiration and rate of state licenses.

20. The assessor shall commence his assessment of such licenses as expire on the thirtieth day of June, at such time as to enable him to complete the same and deliver to the sheriff or collector full lists thereof before that day. When assessor to commence his assessment.

21. As he progresses with the assessment, the assessor, at intervals of not exceeding fifteen days, shall make fair classified lists of all persons required by law to pay taxes to the State upon licenses, and deliver such lists to the sheriff or collector for his guide in collecting the taxes imposed on such licenses. He shall return to the auditor, and to the clerk of the board of supervisors of the county a list of all such licenses, that is to say: A list of such as are granted on or after the first day of November, and before the first day of July following, shall be returned on or before the tenth day of July; and a list of such as are granted on or after the first day of July, and before the first day of November following, shall be returned on or before the tenth day of November. Such lists shall specify the date of each license, for what it was granted, the name of the person to whom granted, the amount of tax, to whom paid, and the data or information on which the tax was assessed. If no license has been issued, he shall return that fact at the time prescribed for the return of his list of licenses. If any assessor fail to perform any duty required of him by this section, without a reasonable excuse therefor, he shall forfeit not less than twenty nor more than one hundred dollars for every such offense. Delivery of lists of licenses to sheriff. Return of lists to auditor and clerk of supervisors. Time of such return. What lists to specify. Penalty for failure of assessor.

22. Any such list signed by an assessor, in which shall be stated the amount of state tax paid for any license and to whom paid, shall be evidence against the sheriff or collector to charge him with the amount so stated to have been paid to him. Lists to be evidence against sheriff or collector.

23. The sheriff or other collector shall be authorized and required to distrain immediately for the amount with which any person may have been assessed by the assessor upon any state license under the provisions of this act, and to sell upon ten days' notice, so much of such person's property subject to distress as may be necessary to pay the taxes so assessed. Collector to distrain for taxes on licenses, And sell upon ten days' notice.

24. No sheriff or collector shall receive from any person a license tax unless he has first received the certificate of the assessor, showing the amount with which such person has been assessed, or the list required to be furnished to such sheriff or collector by the assessor. Collector not to receive tax before he has received the assessor's certificate.

When collector to account for state taxes on licenses.

25. Every sheriff or collector shall account for and pay into the treasury the State taxes assessed on licenses at the following times: The taxes assessed on or after the first day of November, and before the first day of July following, shall be accounted for and paid on or before the thirty-first day of the said month of July; and the taxes assessed on or after the first day of July, and before the first day of November following, shall be accounted for and paid on or before the fifteenth day of December following.

Auditor in certain cases to file accounts against collecting officer.

26. If the State taxes on licenses required to be paid on or before the thirty-first day of July, be not then paid, the auditor shall, within three months after such failure, file in the clerk's office of the circuit court of the county in which the seat of government is located, with the clerk thereof, an accurate account of the amount with which such sheriff or collector may be chargeable on account of such taxes; and thereupon the clerk shall enter up a judgment against such sheriff or collector and his securities for the amount wherewith he is so chargeable, with lawful interest from the time of such failure until the payment thereof, and fifteen per centum damages in addition thereto; which judgment shall have the same validity and be subject in all respects to the like proceedings thereupon as if it had been rendered by the court.

Clerk to enter judgment against collecting officer and his securities.

Damages.

Validity of judgment.

Redress for person aggrieved by judgment.

27. But any person aggrieved by such judgment, may apply to the circuit court of the county in which the seat of government is located, within six months thereafter, to set aside said judgment and try said cause, which such court may do upon such terms as it may prescribe.

Judgment not to be impaired if entered against deceased obligor of the collecting officers bond.

Such judgment, if entered against any obligor of the bond of the sheriff or collector, who is dead at the time of the entry of such judgment, shall not be impaired thereby; and as to the party who may have died, it shall operate to all intents and purposes as a judgment against the personal representative of such deceased party.

Proceedings when collecting officer is unable to find property.

28. When a sheriff or other collector is unable to find property out of which to make taxes imposed upon persons who may have been assessed with a license, such sheriff or collector may return such persons as insolvents, subject to all the laws in relation to uncollected taxes.

Commissions for collecting taxes on license.

29. Every sheriff or collector receiving taxes on licenses under this chapter, shall be allowed a commission of two per centum for his collections on the first five thousand dollars, and one per centum on any excess over that sum; and if he shall punctually pay the same into the treasury within the time prescribed by law, he shall be allowed an additional compensation of two per centum.

How penalties are recoverable.

30. The penalties prescribed by this act, except those recoverable in the circuit court of the county in which the seat of government is located, by existing laws, shall be recoverable by action of debt, presentment, indictment or information.

In what name and county action may be brought.

31. Such action of debt may be brought in the name of the State, either in the county wherein the offence was committed or wherein the offender resides.

32. In the action of debt, bail shall be required as a matter of right, and the defendant arrested under a capias hereby authorized, may, at any time pending the case, give bond, with sufficient security, to the officer making the arrest, who may thereupon discharge him. Such bond shall be conditioned for the appearance of the party to answer the action and to abide by and satisfy the judgment of the court; and shall be returned by such officer to the clerk of the court from which the capias issued, to be filed and preserved by the clerk of such court. If deemed necessary, an attachment may also be issued, as now authorized in other cases, except that an affidavit and a bond shall not be required of the state or her agents in the proceedings hereby authorized.

Bail.

Bond of defendant under arrest.

Condition of bond.

Where bond to be returned.

Attachment may issue.

Affidavit and bond not required of state.

33. In addition to the general duties required of the prosecuting attorney in each county, he shall, upon his own motion, or upon the application of any revenue officer, of any conservator of the peace, or of any person interested, institute prosecutions or actions upon all the offences herein provided.

Prosecuting attorneys to institute actions upon offences.

34. It shall be the duty of the assessors, council and board of supervisors, to whom application shall be made for licenses, to require from each and every person who shall apply for license, an oath to support the constitution of the United States and the constitution of this State.

Oath of applicants for license.

CHAP.—114.—An ACT confirming the election of William E. Allison.

Passed November 30, 1863.

Be it enacted by the Legislature of West Virginia:

The election of William E. Allison, (at the election held October twenty-second, eighteen hundred and sixty-three,) to the office of recorder, in the county of Hancock, is hereby legalized.

Election of recorder in Hancock legalized.

CHAP. 115.—An ACT for the Education and Support of the Blind.

Passed December 1, 1863.

Be it enacted by the Legislature of West Virginia:

The governor of this State is hereby directed to contract with some humane asylum, outside of this State, for the care, education and support of the indigent blind of this State, who are unable to educate themselves, or whose parents are unable to do it for them; and the sum of three thousand dollars is hereby appropriated for that purpose out of any money in the treasury.

Governor directed to have blind maintained temporarily without the state.

Appropriation.

CHAP. 116.—An ACT to authorize the Kanawha Board to borrow Money.

Passed December 2, 1863.

Be it enacted by the Legislature of West Virginia:

1. The Kanawha Board is hereby authorized to borrow any sum not exceeding fifty thousand dollars, for the more speedy completion of the

Sum limited,

Pledge of property.

Rate of interest.

Proviso.

improvements on the Kanawha river; and they are empowered to pledge the tolls and moveable property under their control for the payment of interest on the said loan and the repayment of the principal. The rate of interest to be paid by them shall not exceed eight per centum per annum. Nothing in this act contained shall be construed to bind the State for any liabilities incurred by the said board in pursuance of this act.

CHAP. 117.—An ACT to incorporate the Sandy Valley Coal Railway Company.

Passed December 2, 1863.

Be it enacted by the Legislature of West Virginia:

Names of corporators.

1. C. W. Ricketson, Chas. Knapp, Laban T. Moore, Wm. Ratcliff, R. B. Bowler, W. O. Leslie, Larz Anderson, Geo. Shoenberger, John McVay, Wm. Bagaley, T. J. Simpson, Wm. K. Pendleton, and their associates, successors and assigns, and all who shall become stockholders, whenever five thousand shares of the capital stock as hereinafter provided shall have been subscribed, are hereby created and made a body politic and corporate, by the name, style and title of the "Sandy Valley Coal Railway Company;" and by that name shall have perpetual succession, and shall be in law and equity capable of sueing and being sued, pleading and being impleaded in all courts of law and equity whatsoever, and also of contracting and being contracted with relative to the business and objects of the said corporation; and they may have a common seal, and may change and alter the same at pleasure, and shall have full power to make rules and by-laws for the regulation and management of said corporation, not inconsistent with the laws of this State or of the United States.

Style of company

Powers of company.

Capital stock.

2. The capital stock of said company shall be one million five hundred thousand dollars, divided into shares of one hundred dollars each; books to be opened by the said corporators, or any three of them, to receive subscriptions to the said capital stock, within twelve months after the passage of this act, at Cincinnati, Wheeling, Pittsburgh, or such other places as they may designate.

Time and places of receiving subscriptions.

Board of directors.

3. The business affairs of said company shall be managed by a board of five directors, to be elected annually by the stockholders; and the said board, at their first meeting after each election, shall choose one of their number as president of said board, and such other officers as they may deem necessary for the management of the business affairs of said company. At all elections for officers or otherwise, each stockholder shall be entitled to one vote for every share of stock held by him or her, and in case of a vacancy occurring in the board of directors by death, resignation or otherwise, such vacancy shall be filled by the board from among the stockholders.

Representation of stock.

Authority of company to construct railway.

4. The said company, by its president, directors, agents and servants, shall have the right and power to lay out, build and construct a railway, with a single or double track, with all necessary switches and turnouts, commencing in Wayne county, on the Ohio river, near

the mouth of Sandy, and extending by the nearest and best route along the valley of said Sandy, and along the Tug Fork of said river, within the limits of this State, except and only where it is impracticable to construct said road therein, to a point opposite the mouth of Pond creek, in Logan county, with full power to lay out and construct lateral branches to said railway; and should the directors of said company deem it necessary or expedient to construct a bridge or viaduct over the Big Sandy river, or the Tug Fork of said river, it is hereby declared lawful for them to do so, without obstructing navigation; provided, however, that the consent of the legislature of Kentucky shall be first had and obtained thereto. And the said railway and its lateral branches, when completed, shall be a public highway for the conveyance of passengers and the transportation of freight of all descriptions, subject to the provisions of the seventeenth, eighteenth, nineteenth and twentieth sections of chapter sixty-one of the Code of Virginia, second edition. And the said company shall also permit, upon such terms as may be agreed upon by it, any persons owning lands adjacent to or near the line of said road to construct branch roads to intersect by switches with the main stem of said railroad, for the purpose of transporting coal and other minerals, and timber and other materials, from such lands to the said railroad.

Same to be a public highway.

Land owners allowed to construct branch roads.

5. The said company are hereby authorized to borrow any amount of money not exceeding one million dollars, and to issue bonds, with coupons attached, bearing any rate of interest not exceeding seven per centum per annum, and as security for the payment of the same, to execute a mortgage or mortgages upon their corporate franchises and all their property, real, personal or mixed.

Authority of company to borrow money,

6. The said company are hereby authorized and empowered to purchase, hold, use and possess in fee simple, or any less right, any quantity of land not exceeding fifty thousand acres, and the same to sell, lease, mortgage or otherwise dispose of at their pleasure, and make proper conveyances therefor.

And purchase and own land,

7. For the purpose of laying out and locating their railway and branches, the president and directors, with their engineers and agents, shall have full power and authority to enter upon, and pass through and over any lands, curtilages excepted, on the contemplated route, and to occupy the same so long as they may deem necessary for locating the said road. But the said company, in locating the said railway, branches, depots or stations, shall not throw open any fences or enclosures on any land, or in any way injure the property of the owner or occupier, without his consent, or invade the dwelling house of any person, or any space within sixty feet thereof, without like consent. And when the line of the said way is located, if the owners of said lands or their agents, and the officers and agents of said company, cannot agree upon the value of such lands as the said company may deem necessary to use and occupy for their railway, depots, warehouses and stations, the said company may have and hold the said lands for their use in the manner following, to wit: The said company shall make out a particular description of said lands in writing, and file it in the

And to locate railway.

Restriction.

Disagreement between company and land owner.

How company shall proceed to have lands condemned.

office of the clerk of the circuit court of the county in which the lands are located, stating therein the sum they propose to pay therefor, and also file therewith a bond with securities to the satisfaction of the Judge of the said court, conditioned to pay all that may be recovered against them as hereinafter provided; and thereupon they may enter upon and take possession of said lands, and proceed at once to appropriate and use the same for the purposes designated in the said description; but in no case shall the amount of land for the track of said road exceed sixty feet in width, except in case of cuts or fills, where the width may be one hundred and twenty feet; and the party or his agent owning the said land may file with the said clerk of said court his or her claim therefor, in which shall be stated the sum he or she may demand for said land; and the said court shall thereupon appoint five disinterested persons for the purpose of ascertaining a just compensation for the said land, any three of whom may act; and the sheriff, after the said appointment is made, shall summon the said viewers to meet on the said land at such time as he may appoint, giving at least ten days' notice to the parties interested. And the sheriff shall administer an oath to the viewers, which he is hereby empowered to do, that they, and each of them, will fairly, impartially and honorably assess, fix and determine the amount said railway company shall pay for the use of said land; and return their report in writing under their hands and seals, setting forth the amount, if any, to be paid by the said railway company; which report shall be certified by the sheriff; and on the first day of the next term of the court, the judge of the said court shall direct judgment to be entered upon said report, if no exceptions be taken and filed thereto by either party; but if exceptions be filed, the court shall decide according to the evidence before it; and after judgment is entered upon said report, the company shall hold said land by a good indefeasible title, subject only to the payment of the said judgment. The judge shall have power to determine and order which party shall pay the costs of such proceeding.

Restriction as to width of route.

Land owner to file claim in circuit court.

Court to appoint viewers.

Sheriff to summon and swear them.

Their report.

Judgment of court.

Assessment of costs.

Transfer of stock

8. Any stockholder of said company may assign and transfer his or her stock on the books of the company, or by attorney duly authorized so to do, and after such assignment and transfer, the assignee of said stock shall thereby become liable to said sompany for all unpaid assessments on said stock, and the previous stockholder shall be released from further liability therefor.

Reservation by Legislature.

Proviso.

9. The legislature reserves the right to add to, alter or repeal the powers and privileges herein granted; but such addition, alteration or repeal shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stock-holders to have the surplus which may remain after having provided for the debts and liabilities of the corporation distributed among themselves according to their respective interests.

Conditions imposed on company.

10. This act shall be in force from its passage; but shall terminate and be void if the said company be not organized within two years, and in good faith commence operations on its railway within four, and finish at least twenty-five miles thereof within ten, years from the date of its passage.

CHAP. 118.—An ACT to provide for the Assessment of Taxes.

Passed December 3, 1863.

Be it enacted by the Legislature of West Virginia:

1. The voters of every county shall elect, at the time and in the manner prescribed by law, one or more assessors, that is to say: The counties of Barbour, Greenbrier, Hampshire, Hardy, Harrison, Kanawha, Lewis, Marion, Marshall, Mason, Monongalia, Monroe, Ohio, Preston, Randolph and Wayne, shall each elect two, and the other counties shall each elect one. Those elected before the fourth Thursday of October, in the year eighteen hundred and sixty-four, shall hold their offices for the unexpired term ending on the first day of January, eighteen hundred and sixty five, and shall enter on the discharge of their official duties as soon as they shall have taken the proper oaths of office and given bond as required by law. Those elected on the fourth Thursday of October, in the year eighteen hundred and sixty-four, or after that day, shall hold their offices for two years, beginning on the first day of January next succeeding their election. Each assessor shall reside in the district for which he was elected, and his removal therefrom shall vacate his office.

Election and apportiontment of assessors.

Their terms,

Oath and bond,

And place of residence.

2. In those counties where there may be more than one assessor, each shall be for a certain district, the bounds whereof shall be laid off and described by an order of the board of supervisors of the county, and may be changed at any time by said board, provided that in the laying off or changing of such districts no township shall be divided.

Division of counties into assessment districts.

3. The jurisdiction, powers and duties of an assessor shall not extend beyond the bounds of his district, except to grant license to exercise a privilege which is not local and may be exercised in or out of his district as may be prescribed by law.

Assessor's jurisdiction.

4. Every person elected assessor, shall qualify and give bond within the time prescribed by the seventh section of the act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three. The bond shall be in the penalty of three thousand dollars, to be approved by the recorder of the county and filed in his office. It shall be recorded in the said office and a copy thereof be transmitted to the auditor, according to the seventeenth and eighteenth sections of the said act.

Time allowed for assessors to qualify.

Penalty of bond.

Disposition of bond.

5. If an assessor fail to qualify and give bond as aforesaid, the board of supervisors of the county may declare the office vacant, and the vacancy shall be filled as prescribed by law.

Failure to qualify and give bond.

6. The recorder of every county shall, annually, in the month of January, make out a list of all deeds for the partition and conveyance of land (except deeds of trust and mortgages to secure the payment of debt) which may have been lodged in his office to be recorded, (including those not fully proved,) within the year ending on the thirty-first day of December preceding, which list shall state the date of the deed, when admited to record, names of grantors and grantees, the quantity of the land conveyed, and a description of the same.

Recorders to make, annually, lists of deeds.

Circuit clerks to make lists of judgments, and decrees, and lands devised.

7. The clerk of every circuit court shall make out a list of all judgments and decrees for the partition or recovery of lands which may have been rendered, and of all lands absolutely devised by will which may have been recorded in such court within the same year, and the recorder of the county shall also make out a list of all lands so devised by will which may have been recorded in his office within the time aforesaid; which lists shall state in each case the date of the decree, the land which is the subject of the partition, and between whom and in what proportions it is divided, and the date of the will containing the devise, when admitted to record, the names of the devisor and devisee, and a description of the land devised.

Recorders to make lists of lands devised.

Delivery of lists to assessors.

8. Every list mentioned in either of the two preceding sections shall be delivered by the officer making it to the assessor for his county; or if there be more assessors than one, the clerk or recorder shall deliver such list to one of them, and to the other a copy of so much thereof, at least, as relates to the lands within his district. If any clerk or recorder shall fail for one month after the expiration of the said year to perform any of the duties required of him by this or either of the two next preceding sections, he shall for such failure forfeit fifty dollars.

Failure to deliver by clerk or recorder.

Penalty.

Abstracts of land grants to be forwarded by secretary of the state to recorders.

9. The secretary of the state shall, annually, on the first day of January, make and forward to the recorder of each county an abstract of all grants for land lying in such county, issued by the said secretary upon warrants from the land office of the commonwealth of Virginia, within the year next preceding the said first day of January. And such recorder shall, as soon as may be, after the receipt of said abstract, make out and deliver an attested copy of the same to each of the assessors of his county, and shall file the original in his office. The secretary of the state or any recorder failing to perform the duty required of him by this section, shall forfeit fifty dollars.

Recorders to deliver copies to assessors.

Failure by secretary or recorders.

Delivery to assessor by interested party of judgments, &c.

10. Any party interested may also procure, at his own cost, a statement of any such judgment, decree or devise, as is mentioned in the seventh section, and deliver the same to the proper assessor.

Delivery of books and papers to assessor by predecessor or commissioner of revenue.

11. The assessor shall apply for the official books and papers which his predecessor or the commissioner of the revenue had to the person in possession thereof, who shall deliver the same on such application; and if such person fail to do so, he shall forfeit one hundred dollars.

Penalty for failure.

Procurement of substitutes in case of such failure.

12. The auditor, upon being informed that any such books and papers cannot be obtained, may authorize the assessor to procure substitutes therefor. Any recorder or clerk furnishing the same may be paid therefor such fees out of the county treasury as he might by law charge an individual for similar services.

Authority of assessor to appoint deputy in certain cases.

13. An assessor unable, from sickness or other cause, to perform the duties of his office, may, at his own expense, appoint a deputy, to be approved of by the board of supervisors for his county. Such deputy, after taking the proper oaths, may discharge any of the duties of assessor, and his principal shall be liable for the faithful performance of the same.

Forms and instructions to be furnished assessor by auditor.

14. It shall be the duty of the auditor to prepare and furnish to the assessors printed forms for the land and property books, and also for lists of taxable subjects required to be furnished by the assessors to persons chargeable with taxes; and he shall also, by letter or printed circular, give such instructions, not contrary to law, to said assessors in respect to their duties as to him shall seem judicious and necessary; and if any assessor shall refuse or fail to obey any such instructions, he shall forfeit a sum not less than ten nor more than thirty dollars; the expense whereof, and of transmitting all such printed forms, lists and circulars of information, shall be defrayed out of the state treasury on the governor's order.

Penalty for failure to obey instructions.

Misconduct or neglect by assessor to be communicated by auditor to board of supervisors.

15. The auditor shall communicate any instances of misconduct or of official neglect of any assessor, or any evidence of incompetence furnished by anything in the auditor's office, in writing, to the clerk of the board of supervisors for the county for which he was elected, who shall lay the same before the board at its first meeting after it is received; and the said board shall thereupon proceed to consider and act upon the same.

Proceedings of board thereupon.

16. Upon complaint being made of an assessor, by such writing or otherwise, or when the board of supervisors have cause to believe that there has been neglect of duty on the part of any assessor, it may order a notice to be served by the sheriff of the county, or any other person whom they may appoint for that purpose, requiring such assessor to appear before the board at the next meeting. And after such notice shall have been served on the assessor, at least ten days before the return day thereof, the board shall at its meeting to which such notice is returnable, or to which it may be continued, consider whether there is incompetence or has been misconduct or neglect of official duty on the part of such assessor; and if two-thirds of the members thereof shall be of opinion that such cause exists, shall make an order for his removal.

Removal of assessor.

Land book.

17. Such changes as may happen within the district of any assessor, shall be noted by him in his land book as follows:

Entry of granted lands.

18. He shall enter in the said land book and assess the value of all lands in his district appearing by the abstract of the secretary of the state to have been granted and not previously entered, having reference to the assessed value of contiguous lands similarly situated. If he shall fail to enter any grant mentioned in the abstract on the first land book made out after the abstract shall have been received by him, he shall for such failure forfeit twenty dollars to the state, and a like sum to the grantee, which shall be recoverable in a separate proceeding.

Penalty for failure.

Land sold to state for taxes not to be entered till redeemed.

19. Real estate purchased in for the state at a sale for taxes shall not thereafter be entered in the said books, but the auditor shall keep a register thereof. Whenever any real estate, so purchased, appears by the auditor's certificate to have been redeemed, the same shall be replaced in the body of the book, in the name of the owner or his grantee. When real estate is sold for taxes to individuals, the commissioner shall note on his land book the number of acres sold, and to

Lands sold to individuals for taxes to be continued.

whom, but shall continue the land upon his said book in the name of the former owner until the purchaser obtains a deed therefor.

Transfer of lands partitioned, conveyed, divised or granted.

20. The lands appearing on the lists or statements mentioned in the sixth, seventh and ninth sections of this act shall be transferred accordingly on the land book, and charged to the person to whom the transfer is made.

Lands jointly held assessed to joint owners severally.

21. When a tract or lot of land becomes the property of different owners, in several parcels, the value at which the whole had been assessed shall be divided by the assessor amongst the several parcels, having regard to the value of each parcel compared with that of the whole tract or lot, and the tax upon the whole shall be apportioned accordingly amongst the owners of the several parcels. If any person interested shall be dissatisfied with such apportionment, he may apply to the assessor to make a re-assessment, and the assessor shall make the same accordingly to the best of his skill and judgment, after ten days' notice of the time thereof to the parties interested, or to such of them as may be in the county or revenue district. Any party may, after like notice, apply to the board of supervisors to review the assessor's decision, and it may order his assessment to be corrected. In all cases where the surface of land is held by one person, and the minerals under the surface are held by another, the assessor, or assessors, in counties in which any such mineral and surface titles exist, are hereby authorized and required to determine the relative value of each, and to assess the respective owners of any such mineral and surface rights, with the value of their respective interests; provided, that the amounts assessed to both shall be the same as that with which the land would be assessed were the minerals and surface owned by the same person. Any person feeling himself aggrieved by the assessment of any such lands, or of the minerals under the surface thereof, under this act, shall have the benefit of the remedy hereinbefore provided for in the division of surface lands.

Redress of parties aggriev'd by such apportionment.

Review and correction of reassessment.

Assessment of lands having surface and mineral titles.

Proviso.

Redress of parties aggrieved

Correction of errors in land book.

22. Every assessor in making out his land book, shall correct any mistake made in any entry in the original land book hereinafter provided for; but land which has been correctly charged to one person shall not afterwards be transferred to another without evidence of record, furnished as aforesaid, that such transfer is proper, except as follows:

Proviso respecting transfers.

23. When the owner dies intestate the assessor may ascertain who are the heirs of the intestate, and charge the lands to such heirs. Where the owner has devised the land absolutely, the assessor may charge the land to the devisees. If under the will the land is to be sold, the land shall continue charged to the decedent's estate until a transfer thereof is made.

Assessment of land in wrong county, district or township,

24. If any land lying in one county, district or township, be erroneously assessed in another, the assessor on whose book it is erroneously assessed shall certify the owner's name and the quantity, description and value of the land to the proper assessor, who shall enter the same on his book and charge the tax thereon; and the assessor

in whose book it was erroneously entered shall strike the same therefrom, upon being informed of the entry thereof by the proper assessor.

And of land partly in two counties,

Or townships.

25. Land lying partly in one county and partly in another, shall be entered by the assessor of the county in which the greater part lies; and where land lies partly in one township and partly in another, the assessor shall enter it in the township where the greater part lies; but the entry and payment of taxes in the county or township where any part thereof is situated, shall, for such time, be a discharge of so much of the taxes as may be so charged and paid. Where new buildings are erected, of the value of one hundred dollars or more, upon that part of the land lying in the county in which it is not assessed, the assessor in whose book it is entered shall assess and add the value of such buildings, as in other cases.

Proviso,

Proceedings in case of the conveyance of land (where tract lies in two counties,) lying in the one where not assessed,

26. Where land which lies partly in one county and partly in another, is assessed in the county in which the greater part lies, if the owner thereof shall convey that portion (or any part thereof) lying in the county wherein the same is not assessed, the assessor of the latter county shall enter upon his land book what is so conveyed, and certify the quantity contained in the part conveyed and its valuation, the quantity contained in the entire tract from which the part conveyed is to be taken, a description of the local situation of the entire tract, and the name of the owner thereof, to the assessor of the county wherein the whole was before assessed; who shall strike the part so conveyed from his land book, by deducting the quantity thereof and its proportionate value from that of the entire tract.

Or of land (where the tract lies in two assessment districts,) lying in the one where not assessed,

27. Where land lies partly in one assessment district and partly in another, and is assessed in the district where the greater part lies, if the owner thereof shall convey the lesser portion (or any part thereof,) the assessor for the district wherein such lesser portion lies shall enter what is so conveyed on his land book in the list for the township where it lies, and shall certify the quantity contained in the part conveyed and its valuation, the quantity contained in the entire tract from which the part conveyed is to be taken, a description of the local situation of the entire tract, and the name of the owner thereof, to the assessor of the district wherein the whole was before assessed; who shall strike the part so conveyed from his land book, by deducting the quantity thereof and its proportionate value from that of the entire tract.

Or of land lying partly in two townships, in the same assessment district.

And when land lies partly in one township and partly in another, but in the same assessment district, and is assessed in the township where the greater part lies, and the owner thereof conveys the lesser portion (or any part thereof,) the assessor for the district shall enter the part so conveyed on his land book, in the list for the township wherein it lies, and shall strike the part so conveyed from the list of the township wherein the whole was before assessed, by deducting the quantity thereof and its proportionate value from that of the entire tract.

28. When the assessor shall ascertain that there is any land in his district to which any person has title by patent or otherwise, which

Entry and assessment of lands omitted.

has not before been entered on his land book, or after being entered has for any cause been omitted for one or more years, he shall make entry thereof and of the name of the owner; and if there be no assessment of the same, shall proceed to make such assessment to the best of his judgment, by reference to the assessed value of contiguous lands similarly situated; and shall charge on the land which he so enters, where the quantity contained in the tract exceeds one thousand acres, taxes at the rate imposed by law for each year in which the land was not before entered in such book, from the year eighteen hundred and and thirty-two, inclusive, if the patent issued before that time, and if it did not, then from the date of the patent or other title, together with lawful interest on each year's tax. Where the non-entry or omission occurs after the twentieth day of June, eighteen hundred and sixty-three, the back taxes shall be charged whether the tract contains one thousand acres or a greater or less quantity. Any assessor failing to make such entry and assessment shall forfeit twenty dollars.

Proviso.

29. The preceding section shall not, however, be construed to subject a *bona fide* purchaser of such land to the arrears of such tax, except from the date of his title thereto.

Duties of assessor before making out land book and lists of taxable personal property.

30. Each assessor, before making out his land book, (and when he takes the list of taxable personal property,) shall carry with him the book of the preceding year, and the entry of lands charged to any person resident or having an agent within his district shall be shown to such person or his agent, who shall be required to state on oath whether the same be correctly entered; whether any part thereof ought to be transferred to any other person, and if so, to whom, and the nature of the evidence to authorize such transfer; also to state whether any other land within the district ought to be charged to such resident or non-resident, and to describe the same, as well as to give a description of any of the lands charged to such resident or non-resident which may not be correctly entered. And the assessor shall make such use of the information so obtained as he can properly make consistently, with the other provisions of this act. Any such resident or agent failing to comply with such requisition shall forfeit fifty dollars. Any assessor failing to comply with this section, shall forfeit one hundred dollars.

Penalty for failure.

Assessment of buildings.

31. Each assessor, before making out his land book, shall assess the value of any old building omitted for one or more years, and of any building newly erected upon land on his book, together with interest on the taxes, at the rate of six per centum per annum for the omitted years. And where any such building not theretofore assessed, whether old or new, is found to be of the value of one hundred dollars and upwards, (valuing the same as nearly as may be at the same rate at which other buildings in the neighborhood were valued by the assessors under the previous general assessment,) the value thereof shall be added to the value at which the land was before charged.

32. No new building shall be assessed until so far finished as to be fit for use. But it shall then be assessed whether entirely finished

or not, at its value, and at its increased value from year to year, on account of further improvements, until completed.

33. Any building which may have been increased to one hundred dollars or upwards in value, by repairs or additions thereto, shall be assessed in the same manner as a new building.

34. When from natural decay or other cause, any building which may have been assessed, shall be either wholly destroyed or reduced in value below one hundred dollars, the assessor shall deduct from the assessment against the owner, the value at which such building may have been assessed. For any failure on the part of the assessor to comply with this or any of the three next preceding sections, he shall forfeit fifty dollars. **Penalty for failure.**

35. The assessor in assessing the value of buildings used or intended to be used as manufacturing or other mills, shall ascertain the value of all machinery and fixtures attached thereto, and include the same in the amount of improvement charged to the owner thereof. **Buildings for manufacturing or other mills.**

36. All real estate used for divine worship, or as parsonages or public burial grounds, or belonging to any county, city, incorporated town or township, or agricultural association, and used for public or charitable purposes, and not held or leased out for profit; or belonging to colleges, incorporated academies and free schools, and used for colleges or school purposes; or any public institution for the education of the deaf and dumb or the blind; or houses of refuge, or lunatic, or orphan asylums; or exclusively to the State; or used exclusively for the safe keeping of fire engines, and for the meeting of fire companies, whether owned by a fire company or by a city or town, shall be exempt from taxation; but nothing herein contained shall be construed to exempt from taxation any lot or building partially or wholly used for any private purpose, or as a residence, unless partially so used by the janitor or keeper thereof. **Real estate used for religious, public, or charitable purposes; Or college or school purposes; Or humane asylums; Or used by fire companies, Exempted from taxation. Proviso.**

37. The assessor shall place and retain on his land book the assessed value of all improved lots in any city or town, and the value of any building thereon, as well as of all unimproved lots in any such city or town; and the tax on the same shall be estimated according to such assessed value at the same rate which shall be paid on lands in the country. **Assessment of town lots.**

38. The assessor shall make out his land book in such form as the auditor may prescribe, showing in tables the tracts of land, and in separate tables the town lots, with the names of the owners thereof arranged alphabetically for each township in his district. **Form and contents of land book.**

39. In the tables of tracts of land, the assessor shall enter each tract separately, and shall set forth in as many separate columns as may be necessary, the name of the person who by himself or his tenant has the freehold in possession; his place of residence; the nature of his estate, whether in fee or for life; the number of acres in the tract; the name of the tract if it has a name; a description of it with reference to contiguous tracts or to the water-courses, mountains or other **Tables of tracts of land.**

places on or near which it lies: the distance and bearing from the court house; the value of the land per acre, including buildings; the value of the land and buildings; the sum included in the value on account of buildings; the amount of tax on the whole tract at the legal rate; and from whom, when and how the owner derived the land, where this is known; with a note and explanation of any alteration made, showing why and upon what authority it was made.

Tables of town lots.

40. In the tables of town lots he shall enter separately each lot, and shall set forth in as many separate columns as may be necessary, the name of the person, his residence and estate, as in the tables of tracts of land, charging lots leased for a term of years on ground rent, including all improvements thereon, not to the lessee but to the tenant for life, or fee simple owner under whom the lessee holds. The assessor shall set forth in other columns the number of each lot in the town, with the name of the town, if not previously placed in the caption or heading of the table; a description, where the person does not own the whole lot, of the part which he owns; the value of the buildings on the lot; the value of the lot including buildings; the amount of tax and the legal rate; and like notice of the source of the title, and explanation of alterations, as in the tables of tracts of land.

Taxable property to be listed.

41. All property within this state, and the money and credits of persons residing therein, whether such money and credits be in or out of this state, except such as is hereinafter expressly exempted or otherwise taxed, shall be entered on the list as taxable property, and be subject to equal and uniform taxation. The word "money" shall include not only gold, silver, and copper coins, but bullion and all notes that circulate as money. The word "credits" shall be construed to mean all contracts and securities for the payment of money or other thing, and all claims and demands owing or coming to any person, whether due or not, and whether payable in money or other thing; and where such claim or demand is payable in anything other than money, its present probable value in money shall be listed.

Money.

Credits.

Personal property exempted from taxation.

42. All personal property described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: All public and family libraries; all books, apparatus and furniture belonging to colleges, incorporated academies and free schools, and used for college and school purposes; or to the public institutions for the education of the deaf, and dumb and the blind; or houses of refuge, or to the lunatic asylum; and all personal property belonging to orphan asylums, overseers of the poor in their official capacity, and exclusively to the State, or to any county or township therein; all fire engines or other implements for the extinguishment of fires; all agricultural productions grown directly from the soil, and the natural increase in number and the products of live stock during the year previous to the 1st day of February in any year, when such products remain unsold in the possession of the producer on the said first day of February; and all manufactured articles and products of mechanical skill or labor produced in this state during the year previous to

the said first day of February, and remaining unsold in the hands of the producer on that day.

Other property to be listed.

43. All other property, money, bonds, securities and liquidated claims of all persons, not otherwise exempt, shall be listed for taxation.

By whom personal property listed.

44. Each person of full age and sound mind, not a married woman, shall list the personal property, money, contracts and credits in his possession or under his control or care, subject to taxation, and the subjects or persons on account of which he is chargeable with taxes or county levies. The property of a minor shall be listed by his guardian; if he has no other guardian, by his father, if living; if not, by his mother, if living; if neither be living, by the person having charge of the property; the property of a married woman by herself; of a deceased person, idiot or lunatic, by the personal representative or committee; of a person for whom property is held in trust and is in the actual possession of the trustee, by the trustee; of a corporation whose assets are in the hands of agents, receivers or factors, by such agent, receiver or factor; of every company, firm, body politic or corporate, by the principal accounting officer, partner or agent thereof; all money, bonds or other evidences of debt under the control of any receiver or commissioner, by such receiver or commissioner; and all money deposited to the credit of any suit, by the clerk of the court in which such suit was brought. Personal property not situated in the county, city, town or township in which the owner or the person required by this act to list the same for taxation resides, shall be listed by the agent of such owner or other person, in the county, city, town or township where such property is, unless such owner or other person shall cause it to be otherwise listed in such last mentioned county, city, town or township. All bonds, evidences of debt and claims, wherever the debtor may reside, and all money, shall be listed by the owner thereof, or by the person required by this act to list the same for taxation, or by the agent of such owner or other person having the control and custody of such bonds, evidences of debt, claims, contracts and money.

Assessment of capitations.

45. The number of white male inhabitants and free negroes residing in any district on the first day of February, in each year, shall be ascertained and classified as follows: Each assessor shall ascertain the number of white male inhabitants in his district who have attained the age of twenty-one years, and who are not exempt from taxation on account of bodily infirmity; the number of male free negroes above the age of twenty-one years not exempt from taxation on account of bodily infirmity; and herein shall be included all persons and property removed from one county, city, town or township to another, between the first day of February and the time the assessor's books are required by law to be delivered to the collecting officer by the assessor; but persons assessed, and who have paid their taxes in any county, city, town or township, shall be exonerated in any other for that year.

Assessment of personal property.

46. He shall ascertain all the personal property in his district on the said first day of February, in each year, not exempt from taxa-

tion, and the value thereof; and all money, contracts for money or other thing, and all credits, whether in or out of the state, belonging to each person residing in his district, and the value of such credits; and herein shall be included all money, credits, capital, or other thing loaned out of the state, whether the evidence of the existence of such money, credits, capital, or other thing loaned, remain in the hands of the owner thereof, or in the hands of his agent or other person for him.

Bonds and claims.

47. He shall ascertain from each person residing in his district, the amount of all solvent bonds and securities other than those mentioned in the preceding section, and of all solvent, liquidated and certain demands and claims, however evidenced, owing and coming to such person, whether due or not on the first day of February, deducting from the aggregate amount thereof the amount of all such bonds, securities, claims and demands owing to others from such person as principal debtor, and not as guarantor, endorser or surety; but in neither case shall unsettled book accounts, which have accrued in a licensed business within the year next preceding, be included. The aggregate of principal and interest shall constitute the amount of a bond or claim due and payable. The present value, after deducting the legal interest, shall constitute the amount of a bond or claim not yet due and payable, and which bears no interest.

Unsettled book accounts excepted.

Amount of bond or claim.

Assessment of toll-bridges and ferries,

48. He shall ascertain the yearly value of all toll-bridges and ferries in his district, except such as are by law exempt from taxation. He shall be governed by the actual rent received, where such toll-bridges and ferries are rented or leased out; otherwise he shall make a just estimate of their value.

Property of joint stock companies,

49. He shall ascertain from the proper officer of all incorporated joint stock companies in his district, except railroad and manufacturing companies, the actual value of their capital and of their surplus or contingent fund, exclusive of their real estate, and enter the same on the book of personal property. The real estate of all joint stock companies, except railroad companies, shall be listed and assessed as in other cases, as well as the personal property of manufacturing companies not required by the fifty-eighth and fifty-ninth sections to be listed as manufacturers' stock. If a corporation have branches, the branches shall be assessed separately in the county or district where they are located. Where the capital is so assessed, and the taxes thereon paid by the corporation, it shall not again be assessed to the individual stockholders. To ascertain the proper amount to be assessed to any corporation, the assessor may swear any officer of such corporation, or require him to render a statement in writing under oath.

And personal property of manufacturing companies.

When branches of corproation assessed.

Double assessment of, prohibited.

Authority of assessor to administer oath.

Assessment of capital employed in business,

50. He shall ascertain from all persons residing in his district, the capital invested, used or employed by them in any trade or business, except agriculture, mercantile or manufacturing, not including therein the assessed value of their real estate, which shall be listed and assessed as in other cases; but in no case shall the personal property, credits and money used, acquired or held in such trade or business, be otherwise assessed or listed than as such capital.

51. He shall ascertain from each person in his district who acts under the order of any court as receiver or commissioner, the amount of all money and bonds, or other evidences of debt under his control, the right to which may be undecided, and the style of the suit to which such fund belongs; and from the clerk of such court the amount deposited by order of such court in any bank or savings institution to the credit of any suit in such court, and the style of such suit. **And of funds involved in suit.**

52. The president, secretary or principal accounting officer of every railroad company, whether deriving its corporate powers exclusively from this State or not, shall list for taxation at its true value in money, verified by the oath or affirmation of the officer so listing, all the property, money and credits of such company, of whatsoever kind, wholly held or used in this State, and also the proportional value of all locomotives and rolling-stock passing in and out of this State on railroads crossing the lines thereof, to be ascertained by the proportion which the number of miles run within this State by such locomotives and other rolling-stock, may bear to the whole number of miles run by such locomotives and other rolling-stock over the road belonging to such company or any connecting line; the proportional value of all such locomotives and other rolling-stock so ascertained, to be assessed as the property of the company owning and using the same, whether it be run upon its own or any other railroad within this State. The property exempt from taxation by the charter of any such company shall not be assessed. The proportional value of all locomotives and other rolling-stock, and the value of all other personal and moveable property, money and credits shall be added to the stationary and fixed property and real estate, and shall be apportioned by such officer to each county through which the road passes *pro rata*, in proportion to the fixed property and real estate belonging to the company in such county; and all property so listed shall be subject to and pay the same taxes as other property listed in such county. Said officer shall, on or before the first day of April, in each year, make out and return such *pro rata* valuation of the real and personal property, and money and credits of such company in the several counties through which such railroad passes, verified as aforesaid, to one of the assessors of each of said counties, respectively. If said assessor is of opinion that false or incorrect valuations have been returned, he shall proceed to assess the value of all such property according to the best information he may be able to obtain, in the manner prescribed in section sixty-nine of this act. **Who to list property of railroad companies.** **Exemption.** **Apportionment to counties thro' which road passes.** **Time of making return.** **False return.**

53. Whenever, in any one year, the president, secretary or principal accounting officer of any railroad company shall fail to make the return required by the preceding section, in the manner and by the time therein required, it shall be the duty of the respective assessors of each of the several counties through which said railroad passes, to proceed to ascertain the valuation of the property of said company within his county, mentioned in the preceding section, and in the manner therein prescribed. **Failure to make such return.**

Penalty.

54. Every company failing to render the lists and valuations of its property, as provided in the fifty-second section, shall be fined one hundred dollars for every county through which their road may pass, to the assessor of which no return has been made. If any such company fail to pay the taxes assessed upon its property as aforesaid, the sheriff or other collecting officer shall proceed to sell any personal property of said company, at his discretion, in sufficient quantities to pay such taxes.

Failure of such company to pay taxes.

Return of receipts of insurance and express companies.

55. Every agent of any insurance company, incorporated by any other state or government, and every agent of any express company, whether incorporated by this State or not, shall return, under oath, to the assessor of the district in which the office or agency of such company may be kept, in the month of February, annually, the amount of the gross receipts of such agency for the year next preceding the first day of said month. If such agency shall not have been in operation one year on the said first day of February, then such return shall be for the time such agency shall have been in operation. The amount so returned by such agent shall be taken and held as representing a capital sixteen and two-third times greater than such receipts; which capital, so represented, shall be entered by the assessor on the tax list for the proper county and township, and be subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located. All real and personal property belonging to such agency shall be listed and assessed as in other cases. Any agency failing to make the return required by this section shall forfeit five hundred dollars.

Assessment of their property.

Penalty for failure to make return.

Assessment of merchants' stocks.

56. Every person that shall own or hold in his possession, subject to his control, any personal property within this state which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him for the purpose of being so sold, shall be held to be a merchant; and whenever he shall be required, according to the provisions of this act, to make out and deliver to the assessor a statement of his personal property, he shall make and deliver a separate statement embracing the value of such personal property as appertains to his business as a merchant, and in estimating the value thereof, he shall take the average value of all such articles of personal property, which the said merchant shall have had from time to time in his possession or under his control, during the year ending on the thirty-first day of January next preceding the time of making such statements, if he shall have been so long engaged in such business, and if not so long, then during the period that he shall have been so engaged; and the average value of such property shall be ascertained, as near as may be, by estimating the amount in value on hand in each month of the next preceding year, in which the person making such statement shall have been engaged in business, adding together such amounts and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year; provided that no consignee shall be required to list for taxation the value

Proviso as to commission merchants.

of any property consigned to him for the purpose of being stored or forwarded, if he shall have no interest in such property, nor in any profit to be derived from its sale. The word "person," as used in this and the succeeding sections, shall be held to mean and include "company" and "firm," whether incorporated or not. But as to any merchant who has a license to sell goods under existing laws, this section shall not take effect until the expiration of such license.

"Person" construed.

Proviso as to merchants now holding licenses.

57. Every person who shall purchase, receive or hold in his possession, personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall, when he is required, according to the provisions of this act, to make out and deliver to the assessor a statement of his other personal property subject to taxation, make and deliver to the assessor a separate statement embracing the average value to be estimated as provided in the preceding section, of all articles purchased, received or otherwise held for the purpose of being used in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining, which from time to time, he shall have had on hand during the year ending on the thirty-first day of January next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged.

Assessment of stocks of manufacturer.

58. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list as a part of his manufacturer's stock, the value of all engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, (except such fixtures as may be attached to the freehold and assessed and taxed as such), including all tools and implements of every kind used or designed to be used for the aforesaid purpose.

Manufacturers' implements to be listed as part of stock.

59. Every person intending to engage in the business of merchandizing or manufacturing, in any district in this state, after the first day of February in any year, shall, before commencing such business, report under oath, to the assessor of such district, the probable amount of the average value of the personal property intended by him to be employed in such business until the last day of January thereafter.

Report to assessors by persons intending to employ capital in merchandising or manufacturing.

60. It shall be the duty of the assessor to whom such report may be made, immediately to report to the collecting officer of his county, the name of the person or persons so intending to engage in the business of merchandizing, or manufacturing, his place of business, the amount of the average value of the personal property intended by him to be employed in such business until the last day of January thereafter, and the amount of tax due upon the same, respectively, for the state, county and township purposes; which tax the collecting officer shall proceed at once to collect, and give to the person or persons aforesaid, a receipt therefor, upon the production of which receipt to the assessor, he shall deliver to such person or persons, a certificate to the fol-

Assessment of taxes on such party.

Collection of same.

Certificate of receipt thereof.

lowing effect: "I, A. B. assessor of ——— district, in the county of ———, do hereby certify that ——— of ———, has (or have) been assessed with, and paid the lawful tax on his (or their) personal property, intended to be employed in the business of ———, for the year ending the thirty-first day of January, 18—;" which certificate signed by said assessor shall entitle the party holding to transact such business. But any person who shall, after the first day of February, engage in the business of merchandizing or manufacturing, and obtain therefor the certificate required by this section, and who has previously, for the same year, been assessed with any value which he intends, in good faith, to employ in such business, shall not be assessed with such value, in the probable amount of his average stock therein.

To constitute a license when endorsed by assessor.

Proviso against double assessment in such cases.

Assessor's report of such assessments to the auditor,

61. Each assessor shall report to the auditor monthly after the first day of February in each year, lists of the assessments so made by him as aforesaid, stating the name of the person or firm so intending to engage in the business of merchandizing or manufacturing, the place of business, the amount of the average value of the personal property intended to be employed in such business, and the amount of state tax assessed thereupon until the last day of January thereafter, and the name of the collecting officer to whom the same was paid.

And to the county treasurer.

The assessor shall, in like manner, return to the treasurer of his county similar lists, showing the amount of taxes due thereon for county and township purposes.

Penalty for failure.

Any assessor failing to discharge any of the duties required of him by the three preceding sections, shall forfeit one hundred dollars.

Penalty for commencing business as merchant or manufacturer without assessors certificate.

62. If any person shall, after the first day of February, in any year, commence the business of merchandizing or manufacturing within the state, without having first obtained the certificate from the assessor of the district in which he intends to prosecute such business, as is required by the sixtieth section of this act, he shall be fined not less than one hundred dollars nor more than three hundred dollars.

Time assessor shall begin,

63. Each assessor shall begin, annually, on the first day of February, and proceed without delay, to ascertain all the persons and property on that day, in his district subject to taxes and county and township levies, and otherwise to discharge the duties prescribed by this act.

His duties set forth.

64. Each assessor shall call upon every person in his district required by this act to give in a list of property, money, credits or other subjects of taxation, and the value thereof, or of the persons with respect to which he is chargable with county levies, for a list thereof; and may apply to any officer or agent of a company, except where otherwise directed in this act, or to any person interested therein; and shall administer an oath to any person to make true answers to such questions as he may ask him in relation to any matter about which the assessor is authorized to inquire. An assessor failing to make any call or administer the oath required by this section, unless the person refuse to take it, shall forfeit fifty dollars.

Penalty.

65. The assessor shall also ascertain and assess the value of all property listed as aforesaid; and if in any case a person shall consider himself aggrieved by the valuation of the assessor, such person and the assessor, respectively, shall choose two discreet voters, to whom shall be referred the matter of controversy, and their decision, or that of an umpire chosen by them, shall be final. Each list, with the valuations of property annexed, shall be read over by the assessor to the person from whom it is obtained, or on whose information it is made out, and shall then be corrected in such respects as may be necessary.

Assessor's duties

Redress of party aggrieved.

66. The assessor shall endeavor, by asking proper questions and obtaining answers thereto, to have in such lists a correct and full statement of the persons and the personal property, and the value thereof, in his district subject to taxation or county and township levies, which were in the possession or care of each person in such district on the first day of February, and of all the other subjects before mentioned on account of which any person or company in his district was then chargeable. The answers to the assessor's questions shall always be on oath.

Assessor's duties

67. If any person shall desire it, the assessor shall furnish or cause to be furnished him proper forms of such lists and valuations, and such person shall within ten days thereafter, make out and deliver to the assessor, or deposit with the clerk of the board of supervisors, statements of all property, money, contracts and credits which such person is required by this act to list, and of all subjects and persons on account of which he is chargeable with taxes or county and township levies. He shall annex, in the form prescribed by the assessor, valuations of the property so listed; and shall take and subscribe an oath, to be appended to such statement, to the following effect, viz: "I do solemnly swear (or affirm) that to the best of my knowledge and belief, the annexed statements contain accurate, full and complete lists of all property, money and credits, whether the same are in or out of the State, which I am required to list, and of all subjects and persons on account of whom I am chargeable with taxes or county or township levies, and that in my opinion the valuations of the property listed are not below the fair cash value thereof: So help me God." Which oath may be administered by the assessor or any other officer authorized by law to administer an oath; and if any person be absent from his residence at the time the assessor calls, (and there be no person on the premises authorized to act for such person,) the assessor shall leave or cause to be left for such person at his residence, with some white member of his family over the age of sixteen years, or if there be no such white person on the premises, shall otherwise cause to be delivered to such person, proper forms to enable him to make out the statements aforesaid, with the form of the oath aforesaid appended thereto; and it shall be the duty of such person, within ten days thereafter, to make out and deliver to the assessor, or deposit with the clerk of the board of supervisors, such lists, with the valuations of property annexed, verified by affidavit, as are hereinbefore required; but any such person desiring the forms to be furnished to him, as aforesaid,

Blank forms furnished to parties desiring them.

Time for filling out and delivering or depositing same.

Oath taken by party listing property,

Administered by assessor.

Blank forms to be left at residence of party in his absence.

Time for filling out and delivering or depositing same.

Assessor to value property if required,

may be released from the obligation of valuing the property listed as aforesaid, by exhibiting the same to the assessor, who shall thereupon assess the value thereof; and any such person who is absent when the assessor calls at his residence may decline to include a valuation of his property in the statements required to be delivered or deposited as aforesaid, and in such case the assessor shall ascertain the value of such property; and if the assessor is not satisfied with the valuation of the property made by any such person, he may adopt what he deems a fair and proper valuation thereof; and in case any such person shall consider himself aggrieved by such valuation, the controversy shall be decided in the manner prescribed in the sixty-fifth section of this act.

Or if dissatisfied with valuation returned.

Redress to party aggrieved.

Construction as to household and kitchen furniture.

68. This act shall not be construed to require any person to furnish, or the assessor to take, a list of the articles of such person's household and kitchen furniture other than those specified by this act, but only the aggregate thereof.

Assessor's duties on failure of parties to return lists and valuations.

69. If any person shall fail to furnish a list of the subjects of taxation and county and township levies required by this act, and a valuation of the property listed, the assessor shall proceed to list the same and assess the value thereof on the best information he can obtain; and to that end may examine any person on oath; and whether such person fail to furnish such list or not, the assessor may call for any proper information in possession of any officer of this State, who shall furnish the same to him.

Penalty for parties furnished with forms failing to return lists,

Or refusing to exhibit property to assessor.

Parties so offending to be specially reported.

70. If any person, after being furnished with proper forms as aforesaid, shall fail within the time mentioned in this act to deliver or deposit the list in the manner prescribed by this act, he shall forfeit ten dollars. If any person shall refuse to exhibit to the assessor any property listed, or required by this act to be listed by him in order that a fair valuation thereof may be assessed, he shall pay a fine of not less than twenty nor more than one hundred dollars. Any person failing to comply with this section shall be noted at the end of the assessor's property book, or be otherwise specially reported by the assessor to the auditor.

How personal property book made out, and contents of same.

71. From the lists procured as aforesaid, the assessor for each district shall make accurate statements in the form to be prescribed by the auditor, which shall truly and distinctly set forth the number of white male inhabitants who have attained the age of twenty-one years, except those exempted from taxation on account of bodily infirmity; the number of free colored male inhabitants over the age of twenty-one years, except those exempted from taxation on account of bodily infirmity; the number of slaves and the value thereof; the number of horses, mules, asses and jennets, and the value thereof; the number of cattle and the value thereof; the number of sheep, and the value thereof; the number of hogs, and the value thereof; the aggregate value of all household and kitchen furniture; the number of pleasure carriages, stage-coaches, Jersey wagons, carry-alls, gigs, buggies, wagons, and vehicles of like kind, and the value thereof, not including those taxed as part of the stock of a merchant or manufacturer; the number of watches, and the value thereof, not including those taxed as part of

the stock of a merchant or manufacturer; the number of piano-fortes, melodeons and harps, and the value thereof, not including those taxed as part of the stock of a merchant or manufacturer; all gold and silver plate, plated ware, and jewelry, and the value thereof, not including any such articles taxed as a part of the stock of a merchant or manufacturer; the actual value of the capital and of the surplus or contingent fund, excluding the value of their real estate, of all incorporated joint stock companies, except railroad companies; all money, solvent bonds, contracts for money or other thing, securities and liquidated claims, whether due or not, and whether in or out of this State, belonging to any person or firm, after deducting from the aggregate amount thereof the amount of all such bonds, securities, claims and demands owing to others as principal debtor; the yearly rent or value of all toll-bridges or ferries; the amount of capital invested, used or employed in any trade or business, except agriculture, mercantile, manufacturing, or any incorporated joint stock company, excluding the assessed value of real estate; the amount of money, bonds, contracts or other evidence of debt under the control of any court, receiver or commissioner; the *pro rata* valuation of the real and personal property, money and credits, within the county, of railroad companies; the amount of capital represented by the gross receipts of the agents of insurance and express companies; the amount of the average value of the personal property required to be listed by a merchant; the amount of the average value of the material and manufactured articles required to be listed by a manufacturer; all other articles of personal property not exempt from taxation, and the value thereof.

Entry of omitted taxes.

72. If an assessor shall discover, in making up his land or property books, that any taxes or levies have been omitted for any former year, he shall enter therein such omitted taxes or levies, with lawful interest thereon.

Book of taxes and tax payers.

73. Each assessor shall make a book containing the names of the owners of property, and other persons taxed or subjected to levies, alphabetically arranged by townships, and giving information in such form as the auditor may prescribe, as to all persons and subjects on which taxes may be assessed. Opposite the name of each person shall be extended the whole amount of public tax due from him.

Totals therein.

74. He shall also add up the columns of figures on each page, and at the end of each township list, so as to show at the bottom of each the total aggregate of each column, and number of articles and persons subject to taxation, with the amount of public tax due on every thing contained in such page; and at the end of each book he shall enter the sums from the bottom of the respective pages, by reference thereto, so as to present at one view the various species and total number of the subjects of taxation within his district and each township thereof, and the total amount of the revenue arising therefrom.

Property of decedents.

75. The land of any decedent shall be charged to his estate until it can be properly charged to the heir, devisee or grantee. And the personal property of the decedent shall be likewise charged to his estate until the same be disposed of. While either continues charged

to the estate the personal property shall be liable for the tax on all so charged, and subject to distress or other lawful process for the recovery of the same. Any assets in the hands of the personal representative of the decedent shall be likewise liable therefor.

Assessor's property to be reported by himself.

76. The assessor shall make a particular report on oath to the board of supervisors of his county of all his own property subject to taxes or levies, showing the whole amount chargeable to him therefor. On his book, his property shall be entered and taxes and levies charged to him in like manner as to any other person. For failing to perform any duty required by this section, he shall forfeit one hundred dollars.

Penalty for failure.

Books for former years, how made.

77. If in any case in which, in consequence of there being no assessor for a former year, or from any other cause, no book was made out of the land tax or the tax on personal property, or those subject to levy in any district for that year, the assessor for such district shall proceed to make out books for such year according to the rate of tax or levy which then existed, as well as books for the current year. The like proceedings shall be had with and under the books of such former year as with those of the current year, and the sums therein charged shall be collected and accounted for in like manner.

Proceedings under.

Original personal property book.

78. The original of the personal property book shall be retained by the assessor so long as he continues in office, and then be delivered to his successor. If he fail herein, or if he fail to make the copies required by the the next succeeding section, he shall forfeit fifty dollars.

Copies of same.

79. The assessor shall make three fair copies of the personal property book; and when the same shall be completed, he shall, with such assistance as may be necessary, compare the same with the lists taken from individuals, and examine the same in such other way as his own information will enable him to do; and shall correct such errors as may be found to exist upon such comparison and examination in such manner that the entries of the lists, the additions, proofs, and recapitulations in each of such books shall be both correct and alike in word and figures.

80. As soon as such comparison and examination shall have been completed, the assessor shall make and subscribe the following oath, at the foot of each of the three copies of the personal property book:

Affidavit thereto.

"I, A. B., assessor for the county of ———, do swear, that in making out the foregoing book, I have to the best of my knowledge and ability, pursued the laws prescribing the duties of an assessor; and that I have faithfully and carefully compared and examined this book, as required by the seventy-ninth section of the act of the legislature for the assessment of taxes, and that I believe the entries of the lists, the additions, proofs, and recapitulations are correct, and that the same is alike in words and figures to the two other copies of the personal property book made by me for my district in this year." And the justice (or other officer) before whom the oath is taken, shall annex thereto the following certificate: "Sworn to before me, C. D., a——— for the county of ———, on the —— day of ———," which certificate shall be subscribed by the officer administering the oath.

Certificate of officer before whom made.

First assessors to make land books.

81. It shall be the duty of each assessor who may first exercise the duties of his office within any district under the provisions of this act, to make out a land book embracing all the lands and town lots within such district, compiled from the land book delivered to him by his predecessor, and from such other sources of information as may be within his reach; in which book each tract of land and town lot in each township within such district shall be charged alphabetically in the name of the owner thereof, in the township in which it lies (or the greater part thereof.) In the form of said land book the assessor shall be governed by the requirements of the thirty-eighth, thirty-ninth and fortieth sections of this act, and shall be paid such reasonable compensation for making out the same as the board of supervisors of the county may deem just, to be levied for by said board and paid out of the county levy of the year in which said book may be made.

What such books are to contain.

Form thereof.

Assessor's compensation for making same.

Such book to be the original land book.

82. The land book required to be made by the preceding section, shall, when completed, constitute the original land book for the district, and shall be retained by the assessor so long as he continues in office, and then be delivered by him to his successor. If any assessor shall fail to make such original land book as is required by the next preceding section, he shall forfeit one hundred dollars.

Penalty for failure to make same.

Copies of such land book.

83. The assessor shall also make three fair copies of his land book, and shall make a like disposition of the original thereof as of the personal property book required by section seventy-eight of this act; and if he fail so to do, or to make the copies required by this section, he shall be subject to a like penalty as provided for in section seventy-eight of this act.

Penalty for failure to make same.

Comparison of same.

84. When three copies of the land book shall have been made by the assessor, as required by the preceding section, the assessor shall, with such assistance as may be necessary, compare each copy thereof with the original land book, with the record of the recorder's office, when necessary, and with such transcripts, abstracts or statements from the records of other offices as may be in his possession, relating thereto. He shall correct such errors as may be found to exist upon such comparison, so that the entries, additions, and recapitulations in each of said books, shall be both correct and alike in words and figures.

Affidavit thereto.

85. As soon as such comparisons and corrections shall have been completed, the assessor shall make and subscribe the following oath at the foot of each of the three copies of his land book: "I, A. B., assessor for the county of ———, do swear that in making out the foregoing book, I have to the best of my knowledge and ability, pursued the laws prescribing the duties of an assessor, and that I have faithfully discharged the duties required of me in assessing improvements upon lands, and that I have faithfully and carefully compared and corrected said books as required by law; and that I believe the entries, additions and recapitulations are correct and like the other two copies of the land book made by me within my district in this present year." And the justice or other officer before whom the oath is taken,

Certificate of office, before whom made.

shall annex thereto the following certificate: "Sworn to before me, C. D., a ——— for the county of ———, on the —— day of ———," which certificate shall be subscribed by the justice or other officer making it.

86. After the land book and the book of personal property are completed, compared, and corrected, and certified as required by sections seventy-nine, eighty, eighty-four and eighty-five of this act, the assessor shall, on or before the twentieth day of June next ensuing, deliver one copy of the land book and one copy of the book of personal property to the clerk of the board of supervisors for the county, to be by such clerk, carefully preserved amongst the records of his office, free for the inspection of any person; and a copy of either, or any portion thereof, may be made by or had at the charge of any person desiring the same. And such copies of the land book and the book of personal property preserved by the clerk, shall also serve for laying the county levy.

How copies of land book and personal property book disposed of.

87. The assessor shall, on or before the first day of July next ensuing, deliver one copy of the land book and one copy of the book of personal property lawfully certified as required by this act, to the sheriff or other officer authorized to collect the taxes assessed therein, and they shall be his guide in collecting the same.

88. The assessor shall, on or before the first day of August next ensuing, transmit to the auditor one copy of the land book, and one copy of the book of personal property, certified as required by this act, accompanied with the certificate of the assessor, stating that he has delivered a duplicate thereof to the sheriff or other collecting officer for his county, and the time of the delivery. The copies so transmitted shall be a guide for the auditor to settle by, with such sheriff or other officer. They shall be admitted as evidence in any proceeding for judgment against such sheriff or other officer on account of the taxes with which he is chargeable.

Same as evidence.

Receipt for such books.

89. The assessor may require from the clerk of the board of supervisors, sheriff, (or other officer,) and auditor, a receipt or acknowledgment in writing of the delivery of the said books to them respectively.

Penalty for false entry by assessor

90. If any assessor shall knowingly make a false or erroneous entry on any of his books, he shall for every such offence, forfeit two hundred dollars.

Penalty for failure to deliver copies of land and personal property books.

91. If the duty prescribed by sections eighty-six, eighty-seven and eighty-eight shall not be performed as therein required, the assessor failing to perform any of these duties, shall, for such failure, pay a fine of not less than one hundred nor more than five hundred dollars.

Assessors' fees.

92. Each assessor shall be entitled to the following fees: For making an entry and assessment under the twenty-eighth section, of any parcel of land, one dollar for every such parcel, to be paid by the owner; for making an assessment, when requested by any owner of any part of the land, under the twenty-first section, one dollar, for

which the parties amongst whom the land is divided shall be jointly and severally liable, except where the assessor's proceedings are confirmed by the board of supervisors, in which case the party complaining shall pay the assessor's fee, in addition to any costs which may be incurred in consequence of the application to the board of supervisors; for making an entry transferring lands before charged to one person unto another, seventy-five cents, which shall be charged to the person to whom the transfer is made, and be a compensation for all the tracts in the assessor's district conveyed by the same deed; for an entry of any grant according to the eighteenth section, a fee of twenty-five cents from the grantee, and fifty cents from him for assessing the land granted; for every report made to a collecting officer of the estimated average value of the personal property of a merchant or manufacturer commencing business, a fee of fifty cents, and a like fee for every certificate delivered to such merchant or manufacturer upon the production of the receipt of such officer, which shall be paid by the person whose property is so reported or to whom such certificate is delivered.

Collection of same.

93. The assessors may make out tickets for their fees and place them in the hands of a sheriff or other officer to be collected and accounted for in the same manner that clerk's fees are collected and accounted for. The said assessors shall be subject to the same penalties as clerks of courts for issuing tickets wrongfully.

Penalty for issuing false fee bill.

Assessors' commission,

94. Every assessor shall be entitled to receive in consideration of his services, to be paid out of the county treasury as other claims against the county are paid, a commission of two and one-half per centum on the amount of taxes lawfully assessed by him on persons and property within the preceding twelve months. But where taxes on persons and property assessed in any district in a county exceed twenty thousand dollars, the commission allowed on the excess shall be only one and-a-half per centum; and where the said taxes assessed in any district in a city or town exceed sixteen thousand dollars, the commission allowed on the excess shall be one per centum.

Or yearly allowance.

95. The allowance of the assessor of any county shall, at his election, be his commissions allowed in the next preceding section, or a specific allowance of two hundred dollars. The auditor shall pay out of the contingent fund of his office to the several assessors all postage advanced by them in the transmission of their books, or any correspondence touching the duties of their office, the accounts for which shall be verified by their affidavits.

Postage refunded.

Assessor's settlement with board of supervisors.

96. The said compensation hereby allowed to an assessor, shall be denied, unless he produces to the board of supervisors the receipts or acknowledgments in writing, of the officers mentioned in the eighty-ninth section of this act, for the delivery of copies of the land book and personal property book, within the time prescribed by law, or can show to the satisfaction of the board of supervisors, a strong and sufficient reason for his delay. In every such case the board of supervisors may settle with such assessor for his services upon equitable principles.

Allowance for making books for former year.

97. Where, however, any assessor makes out books for a former year, such compensation shall be allowed him by the board of supervisors, in addition to what he is entitled to for his services during the current year, as he would have received in the former year, had he then been elected and performed the duties of assessor.

98. When one assessor begins in any year, and dies or is removed before the services to be rendered by the assessor in that year are fully performed, in consequence whereof another is elected who completes the same, the sum to be paid for the whole services of the assessors in that year, shall be apportioned by the board of supervisors, between the assessor last elected and the former, according to the services by them respectively performed. If, however, in consequence of any failure to deliver up books or papers which the former had, the latter has to proceed to take the list of taxable property, and do all that he would have had to do in case there had been no previous assessor that year, then he shall receive all the compensation for the said year.

Alteration in books after delivery prohibited.

99. After the assessor shall have verified and delivered the copies of the land book or the book of personal property, no alteration shall be made in either, by him, affecting the taxes of that year.

Redress of parties for erroneous entries therein,

100. But any person aggrieved by any entry in either book, or with any assessment of a license tax, may, within one year after the date of the verification, where the entry is in either book, and within one year from the assessment of said license tax, apply, by petition, for relief to the board of supervisors of the county wherein the assessor gave bond and qualified.

Granted by board of supervisors.

101. If the board of supervisors be satisfied that the applicant is erroneously charged on such book, or so assessed with any taxes on licenses, it shall certify the facts upon which it grants relief, and shall order that he be exonerated from payment of so much as is erroneously charged, if not already paid, and if paid, that it be refunded to him.

Release or repayment of taxes by collector,

102. Such order delivered to the sheriff or other collecting officer shall restrain him from collecting so much as is thus erroneously charged, or if the same has already been collected, shall compel him to refund the money, if such officer has not already paid it into the treasury; and in either case it shall be a sufficient voucher to entitle the officer to a credit for so much in his settlement with the auditor.

Or warrant on state treasury.

103. If what was erroneously charged has been paid into the state treasury, the order of the board of supervisors, attested by its clerk, shall entitle the claimant to a warrant on the state treasury for the amount thereof; provided, that application for the same be made to the auditor within one year after the date of the assessor's verification or such assessment of the license tax.

Time of application for redress.

Action of board of supervisors reviewed by auditor.

104. If from the statement of facts or other evidence, the auditor shall be of opinion that the order of the board of supervisors granting the redress is erroneous, he may advise a supersedeas or appeal to the

circuit court of the county having jurisdiction over the county in which the order was made. Such appeal or supersedeas shall be granted as a matter of right, and shall be prosecuted by the prosecuting attorney for the county. The circuit court, upon the facts stated, and upon such other evidence as either party may offer, shall affirm or reverse the order of exoneration, and shall make such order thereupon for the collection of the taxes or otherwise as such court may consider proper. The appeal or supersedeas shall be tried in a summary way, without pleadings in writing. No costs shall be awarded by the court or paid by the state about such appeal or supersedeas, unless the court, in its discretion, shall give judgment for costs against the assessor who made the erroneous assessment.

Appeal to circuit court.

Proceedings thereupon.

105. Any person desiring to have any tax on real property, with which he or any person from whom he may have derived title, may have been or may hereafter be erroneously or inequitably charged, and which may have been or shall be returned delinquent for the non-payment thereof, released or refunded, may, within five years after such property has been so charged, file with the auditor a declaration in writing, verified by affidavit, setting forth the facts upon which he claims relief; and the said auditor shall grant such relief as upon the facts properly proven before him shall appear to be just and equitable. The said auditor shall, in his annual report, make an accurate statement of all cases upon which he may have acted under this act, and the grounds upon which he may have granted or refused relief.

Remedy in case of taxes erroneously charged on real estate and returned delinquent.

Statement by auditor in annual report.

106. It shall be the duty of every assessor to furnish the prosecuting attorney for the county a list of every violation of the revenue laws committed by any person other than himself, showing the nature and character of each violation. And it shall be the duty of each attorney to deliver such list to the foreman of the grand jury, who shall treat it as having been specially delivered in charge to the grand jury. The said foreman, after the grand jury is discharged, shall return such list to the clerk of the court, to be preserved and filed by him in his office. It shall also be the duty of the circuit court specially to charge the grand juries to inquire into all violations of the revenue laws by the assessor.

Violation of revenue laws.

107. Any action or motion for the recovery of any fine or forfeiture prescribed by this act against any assessor, clerk or recorder, may be instituted or made by the auditor in the circuit court of the county in which the seat of government is located, according to the second section of the forty-third chapter of the Code of Virginia, second edition, or any law in force in relation thereto.

Recovery of penalties under this act.

108. All property not expressly exempted from taxation shall be ascertained in the manner prescribed in this act, and shall be subject to taxation.

General provision as to assessing property.

109. Chapter thirty-five of the Code of Virginia, second edition, is hereby repealed.

Law repealed.

CHAP. 119.—An ACT concerning Superintendents and Commissioners of Schools, and the distribution of the Capitation Tax for 1861, 1862 and 1863.

Passed December 3, 1863.

Be it enacted by the Legislature of West Virginia:

Vacancies—how filled.

1. Where a vacancy exists in the office of superintendent of schools for any county, or in the office of school commissioner in any district of a county, the judge of the circuit court of such county shall fill such vacancy by appointment.

Superintendents to qualify and give bond.

2. The superintendents of schools of the several counties, whether elected under the provisions of the fifth section of chapter eighty-one of the Code of Virginia, second edition, or appointed under the provisions of this act, shall each, before entering upon the duties of his office, obtain a certificate from a justice of his county that he has taken the oaths of office prescribed by law, and if he has not heretofore done so, shall give bond with sufficient security, in the penal sum of not less than two thousand nor more than five thousand dollars, conditioned for the faithful discharge of the duties of his office, and for accounting for and paying over, as required by law, all money which may come into his hands by virtue of his office, to be approved by the recorder of his county, and with the aforesaid certificate, filed in such recorder's office; a copy of which bond and certificate the recorder shall immediately transmit to the auditor.

Amount and condition of bond.

How bond and certificate of oath disposed of.

When auditor to pay capitation tax to counties.

3. Upon the receipt of a copy of the bond and certificate mentioned in the preceding section, the auditor shall pay to such superintendent the amount due such county on taxes from capitations for the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, and also such taxes from capitations for the year eighteen hundred and sixty-three, as may have been paid into the treasury from the several counties, cities or incorporated towns, according to the provisions of an act passed by the general assembly of Virginia, on the thirtieth day of January, eighteen hundred and sixty-three, entitled "an act appropriating the capitation tax for the year eighteen hundred and sixty-two for educational purposes."

CHAP. 120.—An ACT providing for the construction and repair of Roads and Bridges.

Passed December 4, 1863.

Be it enacted by the Legislature of West Virginia:

Authority of the board of public works to transfer roads and bridges to the counties.

1. The board of public works shall have power, by obtaining the consent of the board of supervisors, to transfer any road, bridge or turnpike to the county in which such road, turnpike or bridge may be. Such transfer shall be made by formal resolution to be entered on the record of the board of public works, and a copy of the same transmitted by the secretary of the board, to the clerk of the board of supervisors, for record in each county or counties where such road, turnpike or bridge may be: provided, the board of public works shall not transfer any road, turnpike or bridge which can in their opinion be made self-sustaining.

2. The private stockholders in any turnpike, road or bridge in which the State's interest has been transferred in accordance with the preceding section, with the consent of the board of supervisors of such county, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the said stockholders to the county or counties as aforesaid, by a process similar to that by which the State's interest is conveyed.

Transfer in such case, of the interests of private stockholders.

3. The board of supervisors of each county shall provide for establishing, keeping in repair, changing the location of, or vacating any road, and keeping a record of all the county and township roads in their respective counties, subject to the provisions of this act.

Authority of board of supervisors over county roads.

4. Previous to any petition being presented for the establishment, altering or vacating of a road, notice thereof shall be given by advertisement set up at the court house, and in three public places in each township through which such road is designed to be laid out, altered or vacated, at least thirty days previous to the meeting of the board of supervisors at which the petition shall be presented, stating the time when such petition will be presented and the substance thereof.

Notice of petition for establishing, altering or vacating a road.

5. Upon presentation of said petition, the board of supervisors, at a regular meeting, may appoint three or more viewers, a majority of whom may act, who after having been sworn for the purpose, shall proceed to view the ground and report to the board of supervisors the conveniencies and inconveniencies that will result as well to individuals as to the public, if such road be established, altered or vacated as proposed; and especially, if such road be established or altered, whether any yard, garden, orchard, or any part thereof, will, in such case, have to be taken. They shall also report the grade, costs and any facts and circumstances in their opinion useful in enabling the board to determine the expediency of establishing, altering or vacating such road. They may examine other routes than that proposed for any road, and report in favor of the one they prefer, with the reasons for their preference.

Appointment of viewers for that purpose.

Their duties and report.

6. They shall report the names of the land owners on such route, and state which of them require compensation, the probable amount thereof, and what they believe such land owners are entitled to, if the road is established or altered as proposed, and such other matters as they may deem pertinent. A map or diagram of such route shall be returned with their report. They may employ a surveyor if they deem it necessary.

Map of route.

Surveyor.

7. Upon the report, unless the board be against establishing, altering or vacating the road, it shall award process to summon the proprietors and tenants of the lands on which it will be established, altered or vacated, to show cause against the same. The summons shall be executed on such of them as are in the county, and on any agent therein of any proprietor not within the same.

Proceedings of board upon report.

8. Upon the return of the said process so executed, if the application is to vacate a road, the board, on the report of the viewers, and other evidence, if any is offered, may vacate such road, taking care,

in every case of an established post road, not to vacate the same until another has been established; and if the application be to establish or alter a road, and the board has enough before it to enable it to fix upon a just compensation to the proprietors and tenants, and they are willing to accept what it deems just, it may determine the matter without a writ of *ad quod damnum.*

Writ of AD QUOD DAMNUM.

9. But the writ shall be awarded, if desired by any proprietor or tenant, or if the board shall see cause to apply for the same. Such writ shall be awarded by the circuit court, commanding the sheriff to summon and empannel a jury of twelve freeholders of the county not related to either party, to meet on the lands of such proprietors and tenants as may be named in the writ, at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants. Such notice shall be served like the previous process.

Jury.

Duties of jury.

10. The jury, after being duly sworn by the sheriff, shall view the lands of the proprietors and tenants so named, and ascertain what will be a just compensation to each proprietor and tenant so named, for the lands proposed to be taken, and for the damages to the residue of his tract.

Second jury.

11. If the first jury cannot agree upon their inquest, they shall be discharged and another jury empannelled in like manner, and notice given as aforesaid.

Verdict.

12. When the verdict or inquest is agreed upon, it shall be signed by the jurors and returned by the sheriff, together with the writ, to the circuit court, which shall, if it is satisfied it is in conformity with the law, return the same to the board of supervisors, who shall determine whether the road shall be established or altered, as proposed. When any road is altered, it shall be vacated to the extent of such alteration and no farther. No road shall be established through any lot in an incorporated town, to which the provisions of this act apply, without the consent of the proprietor thereof.

Decision by board.

Restrictions as to establishment and vacation of roads.

Damages chargeable to county.

Exception.

13. When the road is established or altered, the county shall be chargeable with the compensation to the proprietors or tenants, and the cost of the inquest, except where the record shows that the sum allowed by the jury as compensation to any proprietor or tenant is not more than the board of supervisors, before the writ of *ad quod damnum* had consented to allow him. Such proprietor or tenant in such case shall be adjudged to pay the costs occasioned by such writ.

Compensation of surveyor.

14. A statement in writing of the number of days every surveyor was employed in executing any such order, shall be sworn to and presented to the board of supervisors, who may allow to him a reasonable compensation, not exceeding two dollars per day, to be paid by the county.

Who liable to work on roads.

15. All male persons not under twenty-one or over fifty years of age, who have resided one month in this State, and who are not a county or township charge, shall be required every year to do and perform

two days work on the public roads, under the direction of the surveyor of roads within whose precinct they may respectively reside. But no person having performed the work required by this section, in any precinct, shall be required again to perform such work in any other precinct or county in the state, the same year.

Duties of surveyor of roads.

16. It shall be the duty of every surveyor of roads to order out every such person between the first day of April and the first day of October, annually, to meet, with proper tools, and perform the work aforesaid on the public roads within his precinct; and if any such person being personally warned by the surveyor, or by leaving a written notice at his usual place of abode, or by some person under the direction of the surveyor by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice, to attend by himself or a substitute acceptable to the surveyor, on the day and at the time and place directed by the surveyor, or having attended shall refuse to obey the direction of the surveyor, or shall spend the time in idleness or inattention to the duties assigned him, every such delinquent shall forfeit and pay for neglect to attend, unless good cause be shown therefor, or for any of the offences specified, one dollar for every such neglect or offence, which penalty, if not paid within ten days, shall be recovered by action before any justice of the township, at the suit of the surveyor, with costs of collection.

Refusal to work on roads.

Penalty.

Exempts.

17. Persons who may be deemed by the board of supervisors unable to perform, or cause to be performed, the two days work required by this act, shall be exempted from the requisitions of the same for that year.

Residence of person liable to road duty.

18. For the purposes provided for in the preceding sections of this act, the residence of any person who has a family shall be held to be where his family resides; and the residence of any other person shall be in the precinct wherein he boards.

Report of surveyor of roads to board of supervisors.

19. The surveyor of roads for each precinct shall make out and report in writing to the board of supervisors on the first day of their annual meeting to levy taxes:—*First*, The labor performed by persons required to work under the fifteenth section of this act. *Second*, The amount of money received on account of road tax, forfeitures and fines, and the amount of labor performed. *Third*, The application of the same. *Fourth*, The improvements which have been made on the roads and bridges during the year preceding such report, and the condition of such roads and bridges. *Fifth*, The estimated cost of keeping in repair the roads and bridges in his precinct for the ensuing year, after deducting the two days labor provided for in the fifteenth section of this act. *Sixth*, And shall make out a true list of the names of all persons within his precinct liable to road tax.

Levy of road tax.

20. Upon the reports of the surveyors of the roads, the board of supervisors, at their annual meeting for making the county levy, shall, on all property subject to taxation for state purposes, levy a tax for the improvement of roads and building and keeping in repair bridges, and pay for services of surveyors, not exceeding the sum of ten cents on each hundred dollars worth thereof.

Bridge fund.

21. The board of supervisors may set apart such portion of the road tax by them levied as they may deem proper, to be applied to building and repairing bridges in their respective counties, which proportion shall be called a bridge fund, and shall be entered on the duplicate of taxes for the county in a separate column from the other levies for road purposes, and shall be collected in money, and expended under the direction of the board of supervisors in the building or repairing of bridges.

Assessment of road tax.

22. The assessor or assessors of each county shall, immediately after the board of supervisors, at their annual session for that purpose, have determined upon the amount to be assessed for road purposes in their several precincts, make out a list for each road precinct, of the amount of road tax with which each individual stands charged, and transmit the same to the surveyor of roads in each precinct. The board of supervisors shall provide for paying the assessor a reasonable compensation for making out the aforesaid lists.

Working out road tax.

Authority of surveyor of roads to impress teams.

23. The surveyor of roads shall allow each person assessed with road tax to work the same out himself or by a substitute, computing each day's work of an able-bodied man at one dollar. He shall also have power to require a cart, wagon, plough or scraper, with a yoke of oxen or span of horses, and a man to manage them, to be furnished by any person having the same within his precinct, who shall have been assessed and shall be liable for road tax, and the person furnishing the same shall be allowed a fair compensation by the surveyor, and if the surveyor and the owner of the team, cart, wagon, plough or scraper cannot agree as to the amount of pay for such service, the same shall be submitted to two freeholders of their township, who may choose an umpire, and the amount thus ascertained shall be certified by the said freeholders and allowed by the surveyor.

Disagreement as to pay for same.

Duties and authority of surveyor of roads.

24. The surveyors of roads shall open and make all new roads established by the county courts, and not made, as well as all roads that may be hereafter located under the provisions of this act. They shall repair and keep in good order the roads and bridges in their respective precincts; they shall warn all persons assessed and bound to work on the roads in their respective precincts, to meet to work on such roads according to law. They shall collect all road tax, forfeitures, fines and penalties, and execute all lawful authority conferred upon them by the road laws of this State.

25. The surveyors of roads of any township shall have power to change the boundaries, increase or diminish the number of precincts in their respective townships, at a meeting called for the purpose, provided a majority of all the surveyors in such township concur and report any such change to the township clerk, who shall keep a record of the same. For the purpose of improving the road they shall have power, with the consent of the landholder through which their road may pass, to change the same where such change will not increase the length, or injure or require more work to keep the road in repair.

26. Each surveyor, within his precinct, shall erect and keep up, out of any money or road tax under his control, at the forks of every state

or county road a conspicuous guide-board or finger-board, containing an inscription, in legible letters and figures, directing the way and distance to the town or towns, or public places, situated on each road, respectively. Mile-posts and guide-board.

27. If any person shall wilfully demolish, throw down, alter or deface any mile-post or guide-board, every person so offending shall, upon conviction thereof before any justice of the proper county, be fined in any sum not exceeding ten dollars, with costs of suit, and the money, when collected, shall be paid over to the surveyor of roads in whose precinct the offence was committed. Penalty for injuring same.

28. All public roads that have not been vacated according to law, heretofore established in pursuance of law, and now in use, are hereby declared to be public roads, subject to the provisions of this act. Public roads not heretofore vacated.

29. The surveyor of any road may take from any convenient lands so much wood, stone, gravel or earth, as may be necessary to be used in constructing or repairing such road, or any bridge, and may, for the purpose of draining the road, cause a ditch to be cut through any lands adjoining the same, provided such wood and other articles be not taken from, and such ditch be not cut through, any lot in any town, without the consent of the owner. If the owner or tenant of any such lands shall think himself injured thereby more than the surveyor is willing to allow him, a justice, upon application to him, shall issue a warrant to three freeholders, requiring them to view the said lands and ascertain what is a just compensation to such owner or tenant, for the damage to him by reason of anything done under this section. The said freeholders, after being sworn, shall accordingly ascertain such compensation and report the same to the surveyor, who shall allow the same to said owner or tenant on his road tax. Authority of surveyor of roads to take material from adjacent lands. Proviso. Claim by owner for damages.

30. Every surveyor of roads shall continue in office until his successor shall qualify, and within ten days after his successor shall have qualified, he shall pay over to such successor all money in his hands, and transfer all accounts, judgments, books, lists and papers connected with his office. Any surveyor of roads failing or refusing to comply with this provision shall be subjected to a fine of not more than twenty dollars, which, with the amounts of money, judgments and accounts in his hands, may be collected as other debts are collected and paid to his successor. Duration of office of surveyor of roads. His duties respecting his successor. Penalty for failure.

31. All fines, forfeitures, penalties and donations collected under this act shall be appropriated agreeably to the provisions of this act, to the improvement of roads and bridges in the precincts in which they are forfeited and donated. Appropriation of fines, etc.

32. Not less than thirty feet of land shall be condemned for public roads, but in the establishing of such road, the board of supervisors may direct that the road may be constructed of less width than thirty feet, and no bridge shall be less than twelve feet wide; and the board may order a public road adjoining a town or village to be therefrom wider for a distance of one-half mile, but in no case to exceed sixty feet in width; provided, that the grade of any road hereafter established shall not exceed an elevation of five degrees. Width of roads, And bridges. Grade of roads.

Qualification of surveyor of roads

33. Every surveyor of roads, before entering on the duties of his office, shall himself, with one or more good securities, execute and deliver to the clerk of his township a bond in a penalty of one hundred dollars, conditioned for the faithful performance of the duties of his office, and the payment of any money in his hands at the expiration of his term of office to his successor. If any surveyor shall fail to pay over such money in his hands to his successor, it shall be the duty of said successor to institute a suit before a justice upon his said bond, for the use of the precinct, and recover from him and his sureties such damages as may be awarded against him for any breach of his official bond, and costs.

Suit on bond for failure to pay over to successor.

Punishment for obstructing roads or bridges.

34. If any person or corporation shall obstruct any public road or bridge, and suffer such obstruction to remain to the hindrance or inconvenience of the public, or shall change the line of, fill up or dig out the bed of such road, or in any other manner injure such road or bridge, such person or corporation shall be subject to an action before some justice, at the suit of the surveyor, or any person who may be liable to injury by such obstruction, in the precinct in which such road or bridge is situate, and shall be liable for damages. The justice in such suit shall estimate the measure of such damages at a full compensation to the public for the loss of or any injury to such road or bridge, and the amount of damage, after paying costs, shall be paid to the surveyor of roads, to be accounted for and expended in the precinct according to the provisions of this act.

Punishment of surveyor of roads for refusing to serve.

35. Any person who shall, with his consent, have been duly elected or appointed surveyor of roads and shall refuse to serve, shall forfeit the sum of ten dollars; provided, that no person shall be required to serve for two consecutive terms.

Compensation of surveyor of roads

36. Each surveyor shall be allowed for his services for warning the hands, superintending the work, and for the time necessarily spent by virtue of his office, one dollar and fifty cents per day out of his road tax, and any money in his hands unexpended, after deducting from his time two days work as required by the fifteenth section of this act.

General provision as to failures by same.

Any surveyor of a road who shall fail to perform any duty required of him in this act, except refuse to serve or fail to account for and pay over money in his hands, shall pay a fine of not less than five nor more than thirty dollars, and shall be liable to presentment before a grand jury and be fined by the circuit court of his county, for failing to keep his roads in good repair, as required by this act, if at the time of failing to do so, he shall not have expended the money and labor of his precinct.

Obstruction of roads or bridges from natural causes.

37. At any time during the year, when any public road shall be obstructed by the fall of timber or any other cause, or any bridge shall be impaired so that the travel on such road will be unsafe, it shall be the duty of the surveyor to order out such number of the hands of his precinct, as he may deem necessary to remove such obstruction or repair such bridge.

Allowance for overwork.

38. If any person shall, under the direction of the surveyor, perform more labor on the public roads than may be due from him, the

surveyor shall give such person a certificate specifying the amount of extra labor so performed, which certificate shall be received for the amount specified in discharge of any labor or road tax within the same precinct which may be due from the holder of such certificate in any succeeding year.

Erection or removal of gates across roads.

39. The board of supervisors, at any meeting, shall have power to permit gates to be erected across any road, or to remove gates that have been erected across any road; provided, that notice of the application therefor shall have been posted up at the court house, and at three prominent places near where the said gate or gates are desired to be erected or abated, at least twenty days before such meeting of the board.

Foot-bridges.

40. Surveyors of roads may put up and keep in repair such foot-bridges as they may deem necessary for public convenience.

The building or repair of bridges.

Appointment of commissioners by board of supervisors.

Proposals.

Bond of contractor.

41. When a bridge is necessary and of such size and importance that it would not be practicable for a surveyor to construct, the board of supervisors shall appoint commissioners who shall give reasonable notice in some newspaper in the county, or at the front door of the court house, that proposals will be received for the building or repair of such bridge. Upon receiving such proposals, they shall determine which they will accept, and proceed to take a bond with sufficient surety in a penalty of double the amount the said contractor is to receive for the faithful performance of his said contract. Such bond and contract shall be approved and ratified by the board of supervisors and the fact entered of record. The said contract, after such approval and ratification, shall be binding upon the county and such contractor. If the board of supervisors of any county, upon being required to do so, shall fail to appoint commissioners, or if either board of supervisors shall fail in any respect to do on its part what should be done towards the work, the remedy by mandamus shall lie before the circuit court of the county whose board of supervisors is complained of, on behalf of the board of supervisors of the other county. And the circuit court shall compel the board of supervisors complained of, to do what ought to be done in the matter.

Remedy for failure on part of board of supervisors.

Disagreement between two counties respecting a bridge or road.

42. When it becomes necessary to build or repair a bridge across any stream on a line between two counties, or to construct or keep in repair any road, or to connect roads, between two counties, and the authorities of such counties disagree, it shall be the duty of the board of supervisors of each county to appoint commissioners to meet and arrange the matter; and if they should disagree, they may call to their aid a commissioner or commissioners from an adjoining county to assist them in their decision; which decision, when confirmed by the board of supervisors of each county shall be binding.

Application of act.

43. This act shall not be held to apply to any city or town having by its charter, or any law of the State, jurisdiction and control of the streets, alleys and roads within its corporate limits.

Laws repealed.

44. The fifty-second chapter, and the fifty-second and fifty-third sections of the sixty-first chapter of the Code of Virginia, second edition, and all other acts inconsistent with this act, are hereby repealed.

CHAP. 121.—An ACT to require Bonds from certain Officers.

Passed December 5, 1863.

Be it enacted by the Legislature of West Virginia:

Bond required of county treasurer and clerk of board of supervisors.

1. Every county treasurer and clerk of the board of supervisors, before entering on the discharge of the duties of his office, shall give bond, with security to be approved by the board of supervisors of the county, conditioned for the faithful discharge of the duties of his office, and for accounting for and paying over, as required by law, all money which may come to his hands by virtue thereof; which bond of the county treasurer shall be filed in the office of the clerk of the said board, and the bond of the clerk in the office of the recorder. The penalty of the bond of the county treasurer shall be not less than one thousand nor more than ten thousand dollars, and the bond of the said clerk not less than one nor more than three thousand dollars, as the said board shall from time to time appoint.

Where filed.

Penalties.

Failure give bond.

2. If any county treasurer or clerk of the board of supervisors fail to give such bond, within thirty days after his election, his office shall be thereby vacated, unless further time for giving bond be allowed by resolution of the board of supervisors.

Law repealed.

3. The act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three, so far as it is not inconsistent with this act, shall be held applicable to the bonds of county treasurers and the clerks of the boards of supervisors.

CHAP. 122.—An ACT to regulate the election and qualification of Justices and Constables, and to prescribe in part their powers and duties.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

ELECTION AND QUALIFICATION.

Election of justices,

1. At the first township election, and the annual township election to be held in the year eighteen hundred and sixty-seven, and every fourth year thereafter, the voters of each township shall elect a justice, and an additional justice if the white population of their township exceed twelve hundred.

And constables.

2. And at the first township election, and the annual township election to be held in the year eighteen hundred and sixty-five, and every second year thereafter, they shall elect as many constables as justices.

Terms of office.

3. The terms of office of the justices and constables first elected shall respectively commence as soon as they have taken the proper oaths of office and given bond as required by law, but shall expire as if the same had begun on the twentieth day of June, eighteen hundred and sixty-three.

4. The terms of those subsequently elected, except such as may be elected to fill vacancies, shall commence on and include the twentieth day of June next after the election at which they are chosen, and con-

tinue for the periods prescribed by law, that is: for justices, four years, and for constables, two years; and in both cases, thereafter, until their successors are elected and qualified.

Vacancies—how caused.

5. The office of justice or constable shall be deemed vacant not only when he dies, resigns or is removed from office, but also when he removes from the township in which he was elected, or fails to take the proper oaths of office and give his official bond within thirty days after his election.

Resignation.

6. The resignation shall be by writing, signed by the justice or constable, and delivered to the clerk of the board of supervisors of the county, or if there be no such clerk, to the judge of the circuit or the governor.

Removal from office.

7. A justice or constable may be removed from office by the board of supervisors of the county, in the same manner and for the same causes as county officers are removable by said board, two-thirds of the whole number elected to said board concurring in such removal.

Vacancy—how filled.

8. When the office of justice or constable is vacant, the vacancy shall be filled by election for the unexpired term in the manner prescribed in the forty-third and forty-seventh sections of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "An Act to regulate elections by the people."

9. But where a county has not been divided into townships, the governor, when vacancies exist, may appoint and commission justices and constables for the magisterial districts into which the said county was divided under the constitution and laws of the state of Virginia, not exceeding two justices and one constable for any one district; and the officers so commissioned shall hold their offices until the county is divided into townships and their successors respectively are elected and qualified.

Official oath.

10. Every justice and constable, before proceeding to exercise the authority or discharge the duties of his office, shall take the proper oaths of office, under the penalty prescribed in the fifth section of the act concerning oaths and affirmations, passed June twenty-sixth, eighteen hundred and sixty-three. A certificate thereof shall be filed with the recorder of the county, according to the sixth section of the said act.

Bond.

11. He shall also give bond, payable to the state of West Virginia, with one or more sureties to be approved by the recorder and prosecuting attorney of the county, or the judge of the circuit, and filed in the office of the recorder, conditioned for the faithful discharge of the duties of his office, and for accounting for and paying over, as required by law, all money which may come to his hands by virtue thereof. The penalty of the bond in the case of a justice shall be not less than one thousand nor more than five thousand dollars, and in the case of a constable not less than one thousand nor more than three thousand dollars. The provisions of the act, passed June twenty-ninth, eighteen hundred and sixty-three, entitled "An Act relating to official bonds," so far as they are not inconsistent with this act, shall be held applicable to the bonds of justices and constables.

OF THE CIVIL JURISDICTION OF JUSTICES.

Jurisdiction as to place.

12. The civil jurisdiction of a justice shall be limited to the township in which he was elected, except as hereinafter provided.

13. A justice of one township may issue a summons to the defendant to appear before the judge of another township in the same county, if the suit be cognizable by the latter.

14. And where any township has but one justice, if he be under any disability to act, or the office be vacant, any other justice in the same county may exercise jurisdiction within such township.

Oaths, depositions, &c.

15. Where any oath may lawfully be administered, or affidavit or deposition taken, within any township, it may be done by a justice thereof, unless otherwise expressly provided by law.

Deeds, &c.

16. A justice, under such regulations as are prescribed by law, may take within his township the acknowledgment of deeds and other writings, and the privy examination of married women respecting the same; and issue subpœnas for witnesses, and coerce their attendance in any suit pending before him, or any matter in which he may lawfully take depositions.

Subpœnas.

Jurisdiction as to amount in dispute.

17. The jurisdiction of justices, within their several townships, shall extend to all civil actions for the recovery of money or the possession of property, including actions in which damages are claimed as a compensation for an injury or wrong: provided, the amount of money or damages, or the value of the property claimed, does not exceed one hundred dollars, exclusive of interest and costs; subject, nevertheless, to the following exceptions:

Cases where they have not jurisdiction.

18. They shall not have cognizance of any action—*First*, To recover damages for an assault, or an assault and battery; or, *Second*, For false imprisonment; or, *Third*, For malicious prosecution; or, *Fourth*, For slander, verbal or written; or, *Fifth*, Against a justice for misconduct in office; or, *Sixth*, On any contract for real estate, or in which the title to real estate is sought to be recovered or is drawn in question, except actions for trespass on real estate, or damages to the same or to rights pertaining thereto, in which the justice shall have jurisdiction, if the damages claimed do not exceed one hundred dollars, and the real estate be in his township; and no claim of title set up by the defendant shall affect the jurisdiction hereby given.

Real estate.

Penal bond.

19. When the action is on a penal bond, the amount of damages claimed for the breaches alleged, and not the penalty, shall be considered in determining the question of jurisdiction.

Effect of releasing surplus.

20. When a balance is found in favor of a party, either by the verdict of a jury, or award of arbitrators, or upon a hearing before the justice, exceeding the sum for which a justice is authorized to give judgment, such party may release the excess and take judgment for the residue.

When justice is interested, or relation of party.

21. If a justice be a party to the suit, or be interested in the result thereof otherwise than as a resident or tax payer of the township or county, or be related to either of the parties, as father, father-in-law, son, son-in-law, brother, brother-in-law, nephew, uncle or cousin, guardian or ward, or be a material witness for either party, he shall not take cognizance thereof. But when the justice of the proper township is under such disability, any other justice in the same county may exercise jurisdiction in the case, if there be no other objection.

Absence or disability of justice.

22. In case of sickness or disability, or necessary absence of a justice, at the time appointed for any trial or proceeding before him, another justice of the same county may, at his request, attend in his place, and shall thereupon become vested with his authority for the time being. The attending justice shall in such case make and sign proper entries of the proceedings in the docket of the absent justice.

Jurisdiction as to place.

23. The civil jurisdiction of a justice shall not extend to any action unless the cause of action arose in his township, or the defendant, or one of the defendants, resides therein, or being a non-resident of the state, is found or has effects or estate within the township.

When there are several defendants.

24. When two or more persons can be properly made defendants to the suit, and they reside in different townships, the suit may be brought in either township; and the justice, before whom it is brought, may direct a summons to the constable of any township in the state in which one or more of such defendants reside or are found; and the constable shall serve the same and make due return thereof. But one day, at least, shall be allowed in such case, between the issue of the summons and the trial, for every ten miles from the residence of such defendant to the place where the suit is to be tried, computing the distance by the usual route of travel; or the plaintiff may, at his option, dismiss his suit as to the defendants not found within the township where the suit is brought, and proceed against those served.

Confession of judgment.

25. If any debtor shall appear before a justice without process, and confess that he is indebted to another in a specified sum of money, it shall be lawful for such justice, on the application of the creditor, to render judgment on such confession against the debtor for the sum so specified, not exceeding three hundred dollars including interest to the time of confession.

26. But no judgment shall be rendered on such confession unless the following requisites be complied with:—*First*, The defendant must appear personally before the justice. *Second*, The confession must be in writing, signed by the defendant and filed with the justice. *Third*, If the confession be for a sum exceeding fifty dollars, it must be accompanied by the affidavit of the defendant, stating that he is honestly indebted to the plaintiff in the sum named in such affidavit, over and above all just demands which he has against the said plaintiff, and that the confession is not made with a view to defraud any creditor.

27. A judgment rendered on confession may be impeached by any creditor affected thereby; and if confessed with intent to delay, hinder or defraud creditors, shall be void as to them.

Undertakings.

28. Subject to the provisions of the twenty-third section of this act, a justice shall have jurisdiction of actions on the undertakings which may be given pursuant to this act; and suit may be brought on any such undertaking before the justice or court having jurisdiction, by any person sustaining loss or damage by reason of the non-performance thereof.

HOW ACTIONS BEFORE JUSTICES ARE COMMENCED.

How suits are begun.

29. Actions before justices are commenced by summons, or by the appearance and agreement of the parties without summons.

And when.

30. In the former case, the action is deemed commenced upon the delivery of the writ to be served, and the constable shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

RIGHT TO APPEAR BY ATTORNEY.

Suit may be conducted by agent.

31. Any plaintiff or defendant in an action before a justice, unless he be under twenty-one years of age, may appear and conduct his suit or defence in person, or by agent or attorney.

The authority.

32. A party authorized to appear by agent or attorney, may appoint any person, except a justice or constable, to act as such. The authority may be either written or verbal; but unless the party appear in person before the justice and name the person who is to act on his behalf, the authority must be proved either by the agent or attorney himself, or other competent evidence, or must be admitted by the opposite party; otherwise the justice shall not permit any person to appear for another.

Effect of notice to or presence of agent.

33. When an agent or attorney has been appointed in the suit, the service of any notice in the suit on the agent or attorney shall be equivalent to service on his principal; and the presence of such agent or attorney at any proceeding therein have the same effect as the presence of the party he represents.

INFANT PLAINTIFF OR DEFENDANT.

Guardian AD LITEM.

34. Where a party to the action is under the age of twenty-one years, a guardian for the suit must be appointed for him by the justice, as follows:—*First*, If the infant be plaintiff, the appointment must be made before the summons is issued, on the application of the infant, if he be of the age of fourteen years or upwards; if under that age, on the application of some friend. The consent in writing of the guardian to the appointment, and his agreement to be responsible for costs if he fail in the action, must be filed with the justice. *Second*, If the infant be defendant, the guardian must be appointed and consent to act as such before the trial. It is the right of the infant defendant to nominate his own guardian, if the infant be fourteen years of age or over, and the proposed guardian be present and consent to serve; otherwise the justice shall appoint some suitable person who gives such consent. The guardian for a defendant shall not be liable for any costs in the action.

PARTNERS.

35. Persons associated as partners in any trade or business may sue as such before a justice in the firm name by which such partnership is usually known; and it shall not be necessary to allege or prove in such suit who are the persons composing the partnership. How partners may sue.

THE SUMMONS—FORM OF.

36. The style of the summons shall be, "The state of West Virginia,——county." It shall be dated the day it is issued, signed by the justice issuing the same, and directed to the constable of the proper township; unless a person be specially deputed by the justice to serve it, in which case it shall be directed to such person by name. It must contain the names of the plaintiffs. It must also contain the names of the defendants, if known, or if unknown, give a description of them. It shall command the constable or person who is to serve the same to summon the defendants to appear before the proper justice at a time and place specified therein, and must describe the cause of action in such general terms as to apprise the defendants of the nature of the claim against them; and there must be stated therein the amount, excluding interest and costs, for which the plaintiff will claim judgment if the defendants fail to appear. If they fail to appear, judgment shall not be rendered for a larger amount, but interest and costs may be adjudged in addition to the amount so stated. Requisites of the summons.

37. A new summons may, if the case so require, be issued when there has been no service of the previous summons or no return made thereof. It shall be endorsed by the justice issuing the same, "second summons" or "third summons," as the case may be. Second and third summons.

SPECIAL CONSTABLE.

38. A justice, whenever he deems it expedient and proper, may, on the request of a party, appoint a special constable to act in a particular case, or to serve any process or order therein; and the person so deputed shall as to such cause, process or order, have the powers, discharge the duties and receive the fees of the office. Justice may appoint special constable,

39. The justice shall note such appointment on his docket, and with his sureties, be liable on his official bond for any neglect of duty or illegal proceeding of such person in the matter for which he was deputed. But is liable for his acts.

WHEN DEFENDANT'S NAME IS NOT KNOWN.

40. When the name of a defendant is not known to the plaintiff, the summons may be issued against such defendant by a fictitious name, or any description to designate the person intended, and shall not be abated for that cause if served on the proper person; but the justice, when the truth shall appear, shall amend the proceedings on such terms as he deems reasonable, and thereafter proceed as if such defendant had been sued in his right name. Suit when name is unknown.

RETURN DAY OF SUMMONS.

41. The time specified in the summons for the defendant to appear, must be not more than thirty days from its date, except in the case specified in the twenty-fourth section. Time for appearance.

SERVICE OF THE SUMMONS.

How summons served.

42. If the defendant be found, the summons shall be served by reading the same to him, or, if required, by delivering him a copy thereof; if he be not found, by leaving a copy thereof at his last place of abode, in presence of some one of the family, of suitable age and discretion, who shall be informed of its contents.

Acknowledgment of service.

43. An acknowledgment in writing of the service of a summons by a defendant or his attorney, or his voluntary appearance to the action, is equivalent to service.

Corporation.

44. A summons against a corporation may be served upon the president, mayor or chief officer thereof; or if there be no such officer, or he be absent, on any officer, director, trustee or agent of the corporation, at its principal office or place of business.

Branch bank.

45. If the suit be against a bank of circulation, and be brought in a township in which it has a branch, service on the president or cashier of such branch shall be sufficient.

Foreign corporation.

46. If the suit be against a foreign corporation doing business in this State, service may be made by leaving a copy of the summons at any office or place of business of such corporation in the township, with any person found in charge thereof.

Minor.

47. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian or father; or if neither of these can be found, then upon his mother, or the person having the care or control of such minor, or with whom he lives. If neither of these can be found, or the minor be fourteen years of age or over, service on him alone shall be sufficient.

Suit by agreement.

48. When the parties agree to enter without process before a justice any action of which such justice has cognizance, such justice shall enter the same on his docket and proceed to trial, judgment and execution, in all respects in the same manner as if a summons had been issued, served and returned.

ARREST OF DEFENDANT BEFORE TRIAL.

Order of arrest before trial.

49. An order for the arrest of a defendant in a civil action may be made by the justice before whom the same is brought, when there is filed in his office an affidavit of the plaintiff or any credible person, made before any person authorized to administer oaths, showing the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and the existence of one or more of the following particulars:—*First*, That the defendant has removed or is about to remove any of his property out of the State, with intent to defraud his creditors; or, *Second*, That he is about to convert his property or any part thereof into money or securities with like intent; or, *Third*, That he has assigned, disposed of or removed his property or any part thereof, or is about to do so, with like intent; or, *Fourth*, That he has property or rights in action which he fraudulently conceals; or, *Fifth*, That he fraudulently contracted the debt or incurred the liability for which the action is to be or has been brought.

Undertaking of plaintiff.

50. The order of arrest shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained, not exceeding double the amount of the plaintiff's claim as stated in the affidavit.

Order, when issued. Arrest must be in the township.

51. The order of arrest may accompany the summons or be made at any time afterwards before judgment. It shall not be deemed to authorize an arrest out of the township in which it was issued.

Requisites of the order.

52. The order of arrest shall be addressed and delivered to a constable of the proper township. It shall state the names of the parties, the amount of the plaintiff's claim as stated in the affidavit, be signed by the justice issuing it, and shall require the constable to arrest the defendant and bring him forthwith before the justice.

Duty of the officer.

53. The officer receiving the said order shall forthwith arrest the defendant; and unless the plaintiff's claim and the costs are paid, or the defendant is discharged by the order of the plaintiff, shall take him forthwith before a justice and keep him in custody until discharged by law.

Trial—continuance.

54. Upon return of the said order executed, the trial shall proceed unless for good cause shown, on the application of either party, or at the instance of the justice himself, the same shall be continued as in other suits before justices. If the trial be continued for any period, the defendant shall be discharged from custody upon executing, with one or more sufficient sureties, a written undertaking to the plaintiff, to be filed with the justice to the effect that if judgment be rendered in the action against the said defendant, he will either satisfy the same or render himself to answer the process on such judgment. But in no case shall the defendant be detained in custody where such continuance is for more than forty-eight hours, unless it was made at the instance or with the consent of the defendant himself.

ATTACHMENT OF DEFENDANT'S PROPERTY AND CREDITS.

Affidavit to obtain attachment.

55. The plaintiff may have an order of attachment against the property of the defendant in a civil action before a justice, on filing with the justice his own affidavit, or that of any credible person made before any person authorized to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following particulars:—*First*, That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the State; or, *Second*, Has absconded with intent to defraud his creditors; or, *Third*, Has left his residence in order to avoid the service of process; or, *Fourth*, So conceals himself that a summons cannot be served upon him; or, *Fifth*, Is removing or about to remove his property or a part thereof out of the State with the intent to defraud his creditors; or, *Sixth*, Is converting or about to convert his property or a part thereof into money or securities, with like intent; or, *Seventh*, Has assigned, disposed of or removed his property or a part

thereof, or is about to do so, with like intent; or, *Eighth*, Has property or rights in action which he conceals; or, *Ninth*, Fraudulently contracted the debt or incurred the liability for which the suit was brought or is about to be brought.

Claims for TORT.

56. The order of attachment may be issued whether the action be founded on contract or be brought to recover damages for a wrong, if the justice have jurisdiction in the case.

When order may issue.

When returnable.

57. The order may be made at the commencement of the action to accompany the summons, or at any time afterwards before judgment. If issued at the commencement of the action, the return day shall be the same as that of the summons; when issued afterwards it shall be executed and returned forthwith.

Undertaking.

58. Unless the ground of attachment is that the defendant, or one or more of the defendants, is a foreign corporation or a non-resident of the State, the order of attachment shall not be issued until an undertaking, signed by one or more sufficient sureties of the plaintiff, be filed with the justice, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the attachment, not exceeding double the amount of the plaintiff's claim, should it appear thereafter that the order was wrongfully obtained.

For debt not due

59. When the ground of attachment is that the defendant is removing or about to remove his property with intent to defraud his creditors, suit may be brought and an order of attachment issued upon proper affidavit and undertaking, as aforesaid, though the plaintiff's demand be not due and payable.

Requisites of order.

60. The order shall be addressed and delivered to the proper officer, or to the person deputed to execute the same, and shall command him to attach the personal property and credits of the defendant found within the county and not exempt by law; or so much thereof as will satisfy the plaintiff's claim, with interest and costs. The amount of the plaintiff's claim shall be stated in the order as it is in the affidavit.

Where it may be executed.

61. The order of attachment, and the summons, if there be one, accompanying the same, may be executed anywhere within the county in which they are issued.

How executed on property.

62. The person to whom the order is addressed shall go to the place where the property is to be found, and there, in the presence of one or more credible persons, declare that by virtue of the said order, he attaches the property at the suit of the plaintiff; and with one or more householders of the county, who, after being first sworn by the officer for that purpose, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and householder, and returned to the justice with the order. Except as provided in the following section, he shall take the property into his custody and hold it subject to the order of the justice.

When property must be left with owner.

63. If the defendant, or the person in whose possession the property is found, with one or more sufficient sureties, sign and deliver to the officer levying the attachment, or file with the justice at any time

before judgment, an undertaking to the effect that the property so attached, or its appraised value in money, shall be forthcoming to answer the judgment in the action, it shall be delivered to him or permitted to remain in his possession. Such undertaking, when delivered to the officer, shall be by him delivered to the justice.

Several orders against same property.

64. Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient. Where there are several orders of attachment against the property and credits of the same defendant in the hands of the same officer, they shall be executed in the order in which they were received. The lien of all attachments on property or credits shall be in the order they are executed.

Priority of lien.

Priority—how decided.

65. Where several attachments are executed on the same property, or the same persons are made garnishees thereto, the justice issuing the attachment which has priority of lien, on motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

Service on defendant.

Return.

66. When any order of attachment is issued, it shall be served on the defendant, if the same can be done within the county, in the manner prescribed for the service of a summons; and the person to whom the same was delivered to be executed shall make return thereof, with all his proceedings in writing, and the inventory and appraisement of the property, if any, attached thereto. In such return he shall state the names of the garnishees, if any, notified to appear, and the time each garnishee was served with the order and notice.

Second summons

67. If it appear by the said return that property has been attached or any garnishee notified to appear, but that the order of the attachment has not been served on the defendant, the justice, unless the defendant appear to answer the plaintiff's action or confess the same, shall issue a second summons to the defendant, returnable not less than thirty nor more than sixty days after its date, stating that property or credits of the defendant have been attached for the plaintiff's claim; and the person to whom such summons is delivered to be executed, shall forthwith cause a copy thereof to be posted at the front door of the court-house and two other public places in the county, and shall serve the same on the defendant, if he can be found in the county before the return day thereof. If such second summons be returned served upon the defendant, or the defendant appear to the action, or it be returned that, after diligent inquiry, the defendant could not be found within the county, and that copies were posted as aforesaid, the justice may proceed to hear and determine the suit as in other cases.

Judgment binds the property only.

68. A judgment obtained before a justice, where the defendant shall not have been personally served with either the attachment or summons, and shall not have appeared to the action, shall, except as to the property and credits attached, be presumptive evidence only of the indebtedness of the defendant; and the execution issued on such judgment shall not be levied upon any other property or credits than those so attached; nor shall the defendant in such case be barred of any set-off he may have against the plaintiff.

Sale of perishable property.

69. When the property in the custody of the officer under an order of attachment is of a perishable nature or expensive to keep, the justice may issue his order to the officer to sell the same at public auction, at such time and place as in the said order shall be specified; and the proceeds of such sale shall be paid over to the justice, and applied as other money realized from the sale of the property attached is to be applied.

Expenses.

70. The officer shall be allowed by the justice the reasonable expenses of executing the order of attachment and keeping the attached property, to be paid by the plaintiff and taxed in the costs.

GARNISHEE IN ATTACHMENT CASE.

Order on garnishee—how obtained.

71. Where the plaintiff shows, by his own affidavit or that of another, good reason to believe that any person or corporation named in such affidavit, within the county in which the action is brought, has personal property of the defendant in his possession or control, or is indebted to the defendant, whether such debt be due or not, or that any stock in such corporation is held by or for the benefit of the defendant, the justice in the order of attachment, or by endorsement thereon, or by order subsequently issued at any time before judgment in the action, may direct such person or corporation to be served with the order of attachment, and with a written notice to appear before the justice on the return of such order, or such other time as the justice may specify in the notice, and answer respecting the personal property of the defendant in their possession or control and the debts they owe him.

How served.

72. The order of attachment and notice may be served on the garnishee in the same manner as a summons is served.

Examination of garnishee.

73. The garnishee, in accordance with the notice, shall appear before the justice, and answer under oath all lawful questions, approved by such justice, put to him concerning the personal property of the defendant in his possession or control, and the debt owing by him to the defendant; and in the case of a corporation, concerning any stock therein held by or for the benefit of the defendant. Where a corporation is garnishee, the justice may require any officer thereof designated by him to appear and answer. If the garnishee admit property and credits of the defendant to be in his hands subject to the attachment, sufficient to satisfy the plaintiff's claim, with interest and costs, no further question shall be asked.

Lien of the attachment.

74. Whatever is in the hands or under the control of the garnishee or is due by him, belonging to the defendant or owing to him, interests in real estate excepted, shall be bound by the attachment to the extent of the plaintiff's claim with interest and costs, from the time of the service of the order of attachment and notice.

Garnishee may pay his debt, &c.

75. A garnishee may pay the money owing to the defendant by him to the officer having the order of attachment, or to the justice; and shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim with interest and costs. He shall not be subject to costs beyond those caused by his resistance of

Costs.

the claim against himself; and if he disclose truly the property in his hands or control, and the amount owing by him, and deliver over and pay the same as the justice may order, he shall be allowed his costs.

Failure to answer.

76. If the garnishee, or any officer of a corporation thereto required by the justice, fail to appear and answer, or appear and refuse to answer, the justice may proceed against him as for a contempt.

Garnishee may be ordered to pay, &c.

77. If it appear by the oath of a garnishee, or other evidence, that the garnishee at the time of the service of the order of attachment and notice upon him, or afterwards, had in his possession or control, or owed anything, subject to the attachment, and such debt be due and payable, the justice may order the delivery of the property or the payment of the money to himself or to a constable of the township, unless the garnishee, or some one for him, with one or more sufficient sureties, sign and file with the said justice an undertaking to the effect that the property and money shall be forthcoming to answer the judgment in the action.

When plaintiff may sue garnishee.

78. If the garnishee fail to appear and answer, or appear and refuse to answer, or if, having answered, his disclosure is not satisfactory to the plaintiff, or if he fail to deliver the property in his possession or control, or pay the money owing by him as the justice may order, or to give the undertaking specified in the preceding section, the plaintiff may proceed against him in an action in his own name, and recover therein the amount owing by the garnishee to the defendant in the original action, and the value of the personal property of the said defendant in the hands of the garnishee, not exceeding however the sum he shall show himself entitled to as against the said defendant, with interest and costs, and the additional costs of the proceeding against the garnishee. If the debt be not due by the garnishee, the plaintiff may proceed against him when it becomes due. The judgment against the garnishee shall be enforced in the same manner as other judgments of justices.

Debt not due.

Costs of suit against garnishee.

79. If the plaintiff proceed against the garnishee on the ground that the disclosure was not satisfactory, he shall pay the costs of such action, unless it appear by the evidence that such disclosure was incomplete or untrue.

Judgment against or for garnishee—in what cases.

80. Final judgment shall not be rendered against the garnishee, until the action against the defendant in the original suit has been determined; and if in such action, judgment be rendered for the said defendant, the attachment shall be discharged (except as provided in the next section,) and the garnishee recover his costs. If the plaintiff recover judgment against the defendant in the original suit, and the garnishee deliver over the property and pay the money in his hands belonging or owing to the said defendant as the justice shall order, the garnishee shall be discharged, and be allowed his costs out of the property and money surrendered.

APPEAL IN ATTACHMENT CASE.

81. If judgment be rendered in favor of the defendant whose property was attached, the property or its proceeds shall be returned to

Appeal—effect of.

him; unless the plaintiff within a certain time, to be fixed by the justice, which time shall not exceed ten days, give security for an appeal to the circuit court of the county. During the time so fixed by the justice, the attachment shall continue in force; and, in case of an appeal by either party, shall remain in force until otherwise adjudged by the circuit court.

JUDGMENT—HOW ENFORCED.

Sale of property attached.

82. If the judgment be rendered for the plaintiff against the defendant in the action, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, (after applying the money arising from any perishable or other property, and the money received or recovered from the garnishee,) as may be necessary to satisfy the judgment, shall be sold by order of the justice under the same regulations as if it had been levied on by execution, and the money arising therefrom be applied to satisfy judgment with the interest and costs; and the excess, if any, shall be paid to the defendant.

Property to be retaken.

83. The justice may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which may have been delivered or permitted to remain in possession of any person pursuant to the sixty-third and seventy-seventh sections of this act; and the officer under such order shall have the same power to take the property as he would have under an order of attachment. Or, the justice may issue his order to the persons who signed the undertaking specified in those sections, requiring them to have the property and money mentioned therein forthcoming to answer the judgment on or before a certain day to be stated in such order; which order shall be served in like manner as a summons; and if the property and money be not delivered and paid to the justice or the officer serving the said order, on or before the return day thereof, the justice, if good cause be not shown to the contrary, may render judgment in favor of the plaintiff against the persons on whom such order was served, for the said money and the value of the said property, or so much thereof as shall be sufficient to satisfy the original judgment with interest and costs thereon, and the costs incurred under the said order. The judgment so rendered against the said persons may be enforced as other judgments of justices.

Proceedings when property not forthcoming.

WHEN THE PROPERTY IS CLAIMED BY ANOTHER.

Trial of right of property.

84. If any property which has been attached be claimed by any person other than the defendant in the action, the right thereto may be tried as in the case of property taken on an execution issued by a justice.

REAL ESTATE—PRIOR LIENS ON PROPERTY ATTACHED.

Real estate.

85. No interest in real estate shall be attached under or by virtue of any order of attachment issued by a justice, or be in any way bound by the same; and no prior lien on any property or credits attached shall be impaired by the attachment.

Prior liens.

THE PLAINTIFF MUST SUE FOR HIS WHOLE CLAIM.

Plaintiff barred of part not sued for.

86. When the plaintiff has several demands against the same defendant, founded on judgment, or on contract express or implied, he

must bring one action for the whole amount due and payable at the time such action is commenced. If he bring it for part only, the judgment in the suit, whether in his favor or against him, shall forever preclude him from recovering the residue.

SECURITY FOR COSTS.

When security for costs may be required.

87. If a person who intends to bring an action before a justice is not a resident of the township, or for other reasons the justice deems it proper to do so, he may require security for costs before issuing the summons. And when the plaintiff, after the suit is begun, removes from the county, the justice may also require security as well for the costs already accrued as for those that may accrue thereafter. If the plaintiff, being notified of such requirement, fail to comply therewith, the justice may dismiss the suit and give judgment against him for costs.

How given.

88. Security for costs may be given either by depositing with the justice such sum as the latter shall deem sufficient, or by signing, with one or more sufficient sureties, an undertaking to pay to the justice the costs when demanded.

Judgment on undertaking for costs.

89. When such undertaking has been given, the justice, on notice or summons, served on the persons who signed the same or any of them, may render judgment against the person or persons so served, for the costs remaining unpaid, together with the costs of the proceeding against such person or persons, and such judgment may be in his own name, and may be enforced in the same manner as other judgments.

STATEMENT OF THE CAUSE OF ACTION OR DEFENCE.

Bill of particulars of plaintiff or defendant.

90. In every action before a justice, the plaintiff, at or before the time the summons is to be returned, shall file with the justice a statement of the grounds of his action, or a bill of particulars of his claim; and the defendant, before the trial, shall file in like manner a statement of the grounds of his defence, or a bill of particulars of the credits, set-offs or counter claims on which he intends to rely.

What it must show.

91. The statement or bill of particulars must show in a plain and direct manner the facts constituting the cause of action or defence, so as to enable a person of common understanding and information to know what is intended.

Suits on accounts and written instruments.

92. In an action or set-off on an account, or on an instrument under seal or without seal, for the payment of money only, it shall be sufficient to file the same, with a memorandum stating a specified sum to be due thereon.

On bond with condition.

93. If either party claim on a bond or instrument with condition, it shall be sufficient to file the bond or a certified copy thereof, and a brief memorandum showing the particulars in which it is alleged to be broken, and the amount of damages claimed for such breaches of the condition.

Variance between bill and proof.

94. The evidence at the trial shall be confined to the matters set forth as aforesaid; but any variance between the proof and the bill of

particulars or statement of either party, shall be disregarded as immaterial, unless the justice believes the adverse party has been misled thereby to his prejudice.

Amending bill of particulars.

95. The statement or bill of particulars of either party may be amended, or an omission therein supplied, at any time before trial, or during trial, at the discretion of the justice, if he believe substantial justice will be promoted thereby. He may require as a condition the payment of costs to the adverse party; and if it appear that a continuance ought to be granted to the adverse party in consequence thereof, it shall be so granted.

Written instrument sued on must be filed.

96. If the action of the plaintiff, or the credit or set-off of the defendant, be founded on any bond, promissory note, bill of exchange or other instrument of writing, it shall be filed with the justice; and when

Endorsement on same.

judgment is rendered he shall endorse threon the title of the suit and the amount allowed in the judgment to the plaintiff or defendant on account of the same. If the instrument be payable in instalments, he shall also specify in the endorsement for which of the instalments such allowance was made. And no suit or suits shall thereafter be instituted between the same parties, or those claiming under them, for the

The justice must retain it.

matter so adjudged and decided. The justice shall retain the instrument and file it with the papers relating to the suit, unless an appeal be taken from the judgment, in which case the same shall be transmitted to the clerk of the court to which the suit is transferred by the appeal; or unless he grant leave to the person entitled thereto to withdraw such instrument, on filing a copy, for the purpose of recovering another instalment or bringing suit thereon against a different party.

SET-OFF.

What claims may be set-off.

97. If the plaintiff's demand in the action be founded on judgment or contract, express or implied, the defendant, in the following cases, may set off demands which he has against the plaintiff:—*First*, The demand to be set off must be founded on judgment, or contract express or implied. *Second*, If it be founded on a bond, or other contract, sealed or without seal, having a penalty, the sum equitably due by virtue of its condition, and not the penalty, shall be set off. *Third*, It must have belonged to the defendant at the time the plaintiff's suit was commenced. *Fourth*, If the plaintiff's demand be against several defendants, the set-off must have belonged to all the said defendants jointly at the time the suit was commenced. *Fifth*, If there be several plaintiffs suing jointly, the set-off must be a just demand against them all. *Sixth*, If the plaintiff be merely a trustee for another, or if the suit be in the name of a plaintiff who has no real interest in the claim sought to be thereby enforced, the set-off must be a just claim against those whom the plaintiff represents and for whose benefit the suit was brought. A claim against the nominal plaintiff shall not in such case be allowed as a set-off. *Seventh*, In suits brought by executors or administrators for any cause of action existing at the time of the death of the person they represent, whether then due and payable or not, the set-off must be a just claim against the deceased, or against his estate in the hands of the said representatives. But if

such suit be founded on any transaction or contract subsequent to the death of the testator or intestate, claims against him which existed in his life-time shall not be set off without the assent of his executors or administrators. *Eighth*, The claim to be set off must have been due and payable at the commencement of the action.

Statement of set-off.

98. To entitle the defendant to a set-off, he must file a statement or bill of particulars thereof, specifying the nature of his claim with reasonable certainty; but such statement or bill may be amended as hereinbefore provided.

Judgment if set-off be proved.

99. If the amount of the set-off be equal to the plaintiff's debt, judgment shall be entered for the defendant, with costs. If it be less, the plaintiff shall have judgment for the residue only, with costs. If it be more, and the balance found due to the defendant from the plaintiff do not exceed one hundred dollars, exclusive of interest and costs, or the defendant release the excess, judgment shall be rendered for the proper amount, with costs, in favor of the defendant, and execution be awarded thereon as if the judgment had been obtained in a suit brought by the defendant.

When set-off exceeds plaintiff's claim more than $100.

100. If the balance found due the defendant exceed the amount to which the jurisdiction of the justice is limited, and the defendant do not release the excess, judgment shall be rendered for the defendant for costs; and the defendant may thereafter recover the balance due him in any court having jurisdiction.

Defendant must file his whole claim.

101. If the defendant, at the time the plaintiff's action is commenced, has any credit, set-off or counter-claim to allege in defence or reduction of the plaintiff's demand, and be personally served with process in the suit, he shall produce the same, with his evidence in support thereof, in the cause; or be forever precluded from maintaining any action for the recovery thereof.

Exceptions.

102. The preceding section shall not however apply to the following cases: *First*, When the set-off shall exceed the plaintiff's demand more than one hundred dollars exclusive of interest; in which case the person to whom it is owing may, at his option, sue for the whole amount in any court having jurisdiction, or set off so much as will cover the plaintiff's demand and sue for the excess. *Second*, When the set-off consists of a judgment rendered before the commencement of the suit in which the same might be set off. *Third*, Claims in suit before any other court or justice at the time of the commencement of the action.

Plaintiff cannot dismiss, if set-off be filed.

103. In all cases in which a defendant has filed a set-off, he may proceed to trial though the plaintiff fail to appear or discontinue or withdraw his action.

CONTINUANCES.

Defendant to have seven days after return day.

104. On the day the summons is returnable, the defendant, upon making oath that he has a just defence to the suit, or is justly entitled to credits or set-offs not mentioned in the plaintiff's statement or bill of particulars, may demand of right a continuance of the cause for not more than seven days.

Continuance by the justice.

105. On the said return day, if the defendant be not in custody, the justice may, without the consent of either party, continue the cause for not over seven days; but he shall not exercise this privilege at any other time, unless in case of sickness or strong necessity. If the defendant be in custody, the cause shall not be continued for more than forty-eight hours without his consent.

Defendant in custody.

Cause for continuance.

106. When the defendant is not in custody, the justice, on the return day, or any subsequent time appointed for the hearing, may continue the cause, on application of either party without the consent of the other, on the applicant showing by his own oath, or otherwise, that he cannot safely proceed to trial for want of some material paper, evidence or witness, and that he has used reasonable diligence to procure the same, and will probably be able to do so, if time be granted. The continuance shall, in such case, be for a reasonable time to enable the applicant to obtain the paper, evidence or witness referred to.

Time limited.

107. But unless both parties consent, no continuance shall be granted to a time beyond three months after the return of the summons served.

Defendant must state his defence.

108. No continance shall be allowed a defendant without the consent of the plaintiff, except as directed in the one hundred and fourth section, until he shall have filed a bill of particulars of the credits, setoffs or counter claims, if any, on which he intends to rely, or stated the grounds of his defence, as far as may be in his power, to the satisfaction of the justice.

Costs of continuance.

109. Every continuance on the application of a party shall be at his costs; unless when one party has subpœnæd his adversary to testify as a witness and he fails to attend or refuses to testify. If the cause is continued on account of such failure or refusal, the party subpœnæd shall pay the costs occasioned thereby, unless good cause be shown, to the satisfaction of the justice, for such failure.

Trial—when to take place.

110. If the cause be not continued, the trial shall take place on the return day of the summons, if the same has been served; or at the time set for trial when the last previous continuance was made.

Absence of justice.

111. No suit shall be discontinued on account of the absence of the justice. If he fail to attend on the return day of the summons, or at the time to which the suit stands continued, any other justice of the same county may attend and continue the case for not exceeding thirty days; and if he do so, shall make and sign an entry thereof on the docket of the absent justice. If not continued by another justice as aforesaid, it shall stand adjourned for one week, and so on from week to week till disposed of.

APPEARANCE—DEFAULT OF THE PARTIES.

One hour allowed the parties.

112. The parties are entitled to one hour in which to appear, after the time for appearance mentioned in the summons or order of continuance. Neither shall be bound to wait for the other longer than that time; and at the end of the hour, or sooner, if both parties be in

attendance, the justice shall proceed in the cause, unless at the time engaged in the trial of another suit.

When suit to be dismissed.

113. Judgment shall be rendered against the plaintiff, dismissing the action with costs, without prejudice to a new suit for the same cause, in the following cases:—*First*, If he fail to appear to prosecute his suit within one hour after the time for appearance mentioned in the summons or the order of continuance. *Second*, If he discontinue or withdraw his action; or, *Third*, If it appear that the action is brought in the wrong township, or that the justice for any other reason has not jurisdiction. And the cause of such dismissal shall be entered in the justice's docket.

Setting aside dismissal.

114. The judgment against the plaintiff for failure to appear may be set aside by the justice within seven days after it is rendered, on such conditions as he may see fit to impose; but the defendant must have notice of the motion to set aside such judgment and an opportunity to be heard in opposition thereto.

Plaintiff must prove his case, tho' defendant fail to appear.

115. When a defendant does not appear and answer, the plaintiff cannot recover without proving his case. The justice, if the process has been served on the defendant, shall, in such case, proceed to hear the allegations and evidence of the plaintiff and render judgment as the right shall appear.

Part of defendants not served.

116. When the summons is issued against two or more defendants, but is not served upon all of them, and those not served do not appear and answer, the plaintiff, at his option, may have a new summons against those not previously served, and the justice in such case shall continue the cause for the return thereof; or the plaintiff may dismiss his suit as to the defendants not served and proceed against the others.

Setting aside judgm'nt against defendant.

117. When the defendant does not appear and judgment is rendered against him in his absence, the justice may set aside the judgment within ten days thereafter, on motion of the defendant and payment of costs. But of such motion, reasonable notice must be given to the plaintiff; and the judgment shall not be set aside, unless the defend ant makes oath that he has a lawful defence to the action, or is entitled to some credit, set-off or counter-claim which has not been allowed him; and shows by his own oath, or otherwise, reasonable cause why he did not appear. When the judgment is so set aside, the justice shall set a day for the trial, of which the plaintiff, if not present, must have at least three days notice. If judgment be entered a second time against the defendant in his absence, it shall not be again set aside.

TRIAL—THE JURY.

Trial by the justice.

118. At the time appointed for the hearing, if a jury be not demanded by either party, the justice shall hear the proofs and give judgment as the law and the evidence shall require.

Right to demand a jury.

119. Either party to a civil suit before a justice, when the value in controversy or the damages claimed exceed twenty dollars, shall be entitled, under the regulations herein prescribed, to a trial by six jurors, if demanded.

When demand must be made.

120. The demand must be made before the justice has commenced an investigation of the merits of the case, by the examination of any witness or the hearing of other evidence; and the party who makes the demand must first file his statement or bill of particulars showing the grounds of his action or defence, if he has not already done so.

Statement must first be filed.

And costs of jury deposited.

121. The party demanding the jury must deposit with the justice a sum of money sufficient, in the opinion of the justice, to cover the costs of such jury.

Time for return of jury.

122. When a jury is to be called, the cause shall be continued until a time fixed for the return of the jury. If neither party show good cause for a later day, the jury shall be returned on the same day or within the next two days.

Jurors—how selected.

123. The names of at least eighteen persons, designated by the justice, shall be by him, or under his direction and inspection, written on separate pieces of paper or ballots of the same size and appearance, which shall be folded or rolled so that the names cannot be seen, and that, as far as possible, one cannot be distinguished from another. The ballots so folded or rolled shall be put into a box and be well shaken or mixed together. The justice shall then, in the presence of the parties, their agents or attorneys, draw out one of the ballots, and if no just exception be shown by either party, shall enter the name written on such ballot on the list of jurors to be summoned; and so shall proceed till the number of names on the list amounts to six.

Exception to juror.

Qualifications.

124. The persons whose names are put into the box, as aforesaid, must be voters of the township, not exempt from serving on juries in the circuit court, and not of kin to the plaintiff or defendant, or interested in the suit.

VENIRE or summons.

125. The justice shall then issue a *venire* or summons, directed to a constable of the township or any person deputed by the justice to serve the same, commanding him to summon the six persons so selected to appear at the time and place therein stated, to serve as a jury in the trial of the action between the plaintiff and defendant.

How served and returned.

126. The officer shall serve such *venire* by personal service on the jurors therein named, and return the same, endorsed by him with the names of the persons so summoned, at the time and place appointed for the trial.

Delinquent jurors.

127. Any person so summoned who fails to appear, without a sufficient excuse, or when in attendance refuses to serve on the jury, shall be liable to the like penalty, and may be proceeded against in the same manner as a person who neglects or refuses to attend before a justice when subpœnaed to testify.

Filling vacancy in jury.

128. If a sufficient number of competent jurors be not obtained as aforesaid, the justice, in order to supply the deficiency, may direct the constable or person deputed, to summon any of the by-standers or other persons to serve as jurors.

Exceptions to jurors.

129. Before the jury are sworn, either party may allege any lawful exception to any one or more of them, unless the same exception was

made at the drawing to the same person, and then overruled by the justice. The jurors proposed shall be subject to the same exceptions as jurors in the circuit court. The question arising on the exception shall be determined by the justice, who may examine the juror and any witness, under oath, in relation thereto. If the exception to a juror be sustained, another shall be called in his stead.

Oath of jurors.

130. The jury shall be sworn by the justice, well and truly to try the matter in difference between the plaintiff and defendant, and a true verdict give according to the evidence.

Hearing the evidence, &c.

131. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence; and when they have heard the same, they shall be kept together in some convenient place, under charge of a constable or person deputed by the justice, until they have agreed on their verdict or are discharged by the justice.

Verdict.

132. When they have agreed on their verdict, they shall deliver it publicly to the justice, signed by one of their number as foreman; and the justice shall enter the same at full length on his docket.

Proceeding when jury disagree.

133. Whenever the justice is satisfied the jury cannot agree, he may discharge them and issue a new *venire* returnable within forty-eight hours, unless the parties agree on a longer time, or agree that the justice may himself render judgment on the evidence already heard before him; which, in such case, he may proceed to do.

Fees of jurors.

134. On the verdict being delivered to the justice, each juror shall be entitled to receive from him fifty cents out of the money deposited in his hands by the party who demanded the jury. When the jury are unable to agree, the same compensation shall be paid them out of the said money. If the final judgment in the action be in favor of the party who demanded the jury, the amount so paid shall be included in the costs awarded against the adverse party; unless it be manifest to the justice that a jury was demanded with a view to increase the costs, and not for any just and proper purpose.

Setting verdict aside.

135. If the justice believe the verdict to have been procured by fraud or undue means, or to be the result of partiality or prejudice, or to be manifestly contrary to the law or the evidence, he may, at any time within seven days thereafter, on the motion of either party, set it aside. In such case he shall appoint a time for a new trial, and issue a *venire* for another jury. The adverse party must, however, have reasonable notice of such motion, unless the same is made on the day when the verdict is rendered, and in his presence.

ARBITRATORS.

Parties may submit suit to arbitrators.

136. At any time before judgment the plaintiff and defendant may, by mutual agreement, have the cause submitted to the arbitrament of three disinterested men chosen by themselves; and if the arbitrators be present, they shall hear and determine the matters in difference between the parties, being first sworn by the justice impartially to decide the same according to the law and the evidence. But if they be

Oath.

Time and place of meeting.
Summons to arbitrators.
Fees.

not present, a time and place shall be appointed by the justice for the trial, unless the parties agree upon the same, and the justice shall issue a summons to the arbitrators to attend, which summons may be served by the constable, or by the parties, as they may agree. The fees of arbitrators shall be the same as those of jurors.

Award and judgment.

137. When the arbitrators attend, being first sworn as aforesaid, they shall hear and determine the cause, and make out their award in writing, (which shall be valid when signed by any two of them,) and return the same to the justice, who shall enter a note thereof on his docket, and render judgment thereon, and issue execution as in other cases.

Effect of reward.
When may be set aside.

138. Every judgment on such award shall conclude the rights of the parties, unless, within ten days from the rendition of such judgment, it be made to appear to the satisfaction of the justice, or afterwards to the court on appeal, that the award was obtained by fraud, corruption or other undue means. In such case the award and judgment may be set aside by the justice or court, and the cause be tried as if the arbitration had not been agreed upon.

Appeal.

139. No appeal shall be granted to the circuit court from a judgment of a justice rendered on an award as aforesaid, unless the party praying such appeal, and otherwise entitled to it, makes oath that he verily believes such award to have been obtained by fraud, corruption or other undue means.

Arbitration set aside if award not made in two weeks.

140. If, after the arbitration has been agreed upon as aforesaid, the award be not returned to the justice within fourteen days, the justice, on the application of either party, the other having reasonable notice, may in his discretion set aside the agreement, and thereafter proceed to trial and judgment as in other cases.

WITNESSES—EVIDENCE.

Subpœna for witnesses.

141. A justice may issue subpœnas to compel the attendance of witnesses to give evidence in any action pending before him; and such subpœna may be served anywhere within the county.

How served.

142. A subpœna may be served by a constable, or any other person; and shall be served by reading the same, or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of abode.

Witness in adjoining county.

143. Whenever either party, in an action pending before a justice, makes oath that the testimony of a witness residing in any county adjoining that in which the suit is pending, is material and necessary to him in the trial of the cause, stating in such affidavit the facts he expects to prove by such witness, the justice shall continue the cause at the costs of such party for a period not exceeding two weeks, and forthwith issue a subpœna for such witness, which subpœna may be addressed to any constable of the township in which the witness resides, or be served by any other person as in other cases.

Witness's right to demand his fees.

144. A witness in a civil suit is entitled, at the time the subpœna is served, to demand payment of his legal fees for traveling to and from

the place of trial and one day's attendance. If he demand them and they are not paid, he is not obliged to attend the trial before the justice.

Fees.

145. A person attending as a witness, under a subpœna, shall be allowed fifty cents for each day's attendance, and five cents for each mile necessarily traveled to the place of attendance, and the same for returning.

Costs of witness —by whom paid.

146. If a witness attend on subpoena and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter or otherwise, render such examination unnecessary.

147. Any party calling more than two witnesses to any fact which is not contradicted by another witness, shall pay the costs of such additional witnesses.

Witness must claim his fees before judgment.

148. No claim for attendance shall be allowed a witness unless made before judgment is entered.

Delinquent witness.

149. Whenever it shall appear to the satisfaction of a justice that any person has been duly served with a subpœna to give evidence before him in any matter in which he has authority to require such witness to appear and testify; that his evidence is material; and that he neglects or refuses to attend as required by such subpœna, the justice may issue an order of arrest against such person, if found within the county, unless it appear that under the provisions of the one hundred and forty-fourth section he was not bound to attend.

Arrest.

Fine.

150. When a person so arrested is brought before the justice, and no sufficient excuse is shown for his neglect or refusal to obey the subpœna, or when a person in attendance refuses to testify, the justice may impose a fine on him, not exceeding five dollars and the costs of the arrest and proceeding. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and shall have the effect of a judgment in favor of the state of West Virginia, and may be enforced as other judgments of justices.

Witness from another county,

151. When the witness was subpœnaed to attend a trial out of the county where he resides, the order of arrest must be issued and the fine be imposed by the justice of the township in which such witness resides or was served with a subpœna, on proper evidence of the default.

Delinquent witness liable for damages.

152. Every person subpœnaed as aforesaid and neglecting or refusing to appear and testify without sufficient excuse, and every person present at the trial and refusing to testify shall also be liable to the party requiring his evidence, for all damages such party may sustain thereby.

Right of one party to require the other to testify.

153. Either party to a civil suit before a justice may require the adverse party, or the person for whose benefit such suit is being prosecuted or defended in opposition to himself, to testify as a witness at the trial, or by deposition, in like manner and subject to the same rules as other witnesses; or such adverse party or person may be required to

Interrogatories.

answer interrogatories in writing pertinent to the matter in difference, approved and allowed by the justice. Such answers may be read in evidence in the suit by either party. No such testimony shall be used in any other suit or proceeding, civil or criminal, for or against the party or person so testifying or answering.

Effect of his refusal.

154. When the person so required to testify or answer interrogatories, fails or refuses so to do, having been subpœnaed for the purpose, or notified of the requirement, he may be arrested and fined as a delinquent witness; and if he be plaintiff in the action, or the suit be prosecuted for his benefit, the justice may, in his discretion, dismiss the same and give judgment against him for costs; or, if he be defendant, may proceed as if the plaintiff's demand was confessed.

Notice of deposition.

155. No affidavit or deposition of any person shall be given in evidence on the trial on behalf of either party, if the other object, unless the party against whom it is offered had reasonable notice of the taking thereof, or attended and was allowed freely to cross-examine the affiant or witness subject to the rules of law.

Right to cross examine.

Objection to competency.

156. If a witness offered at the trial be objected to as incompetent, the objection shall be tried and determined by the justice. The proposed witness may be examined on oath touching the question of his competency, and other evidence may be given in support of or against the objection.

Who are incompetent to testify.

157. The following persons are incompetent to testify: *First*, A person interested in the result of the suit which is being tried, unless such interest be released or discharged, or he be proposed as a witness by the party against whom he is interested, or such party do not object to his examination. *Second*, Persons of unsound mind; and children who appear incapable of receiving just impressions of their obligation to tell the truth or of the facts respecting which they are to be examined. *Third*, Husband and wife, either for or against each other; or concerning any communication made by one to the other during the marriage, whether called to testifiy while the relation subsists, or after it is dissolved. *Fourth*, An attorney without his client's consent, concerning any communication made to him by his client touching the matter in which he is consulted or employed, or any counsel or advice given by him to his client. *Fifth*, A minister, clergyman or priest of any religious denomination concerning any confession made to him according to the course of discipline enjoined by the church to which he belongs.

When party may testify in his own behalf.

158. A party to the suit, or person having an interest in the result thereof, may be a witness to prove the loss of any paper which may come in question at the trial, in order to allow the introduction of secondary evidence of its contents; or to prove the death or absence from the country of a subscribing witness in order to allow the introduction of other evidence of the execution of any instrument.

See sect. 161.

Proof of signature.

159. The execution of any written instrument or of any assignment or endorsement thereof, produced at the trial, need not be proved, unless the adverse party makes oath that he does not believe the same to be genuine.

Depositions to be used before justices.

160. Depositions of witnesses residing out of the county, or sick or otherwise unable to attend, or about to leave the county, may be taken by either party on reasonable notice to the other, to be used in trials before a justice; and no commission shall be necessary.

161. Such deposition shall be sent under seal to the justice before whom the case is to be tried, the officer taking the same writing his name across the place where it is sealed. And if the witness at the time of the trial be absent from the county, or sick or otherwise unable to attend, which facts may be shown by the oath of a party to the suit, or otherwise, the deposition, if competent and proper evidence, may be read in evidence at the trial by either party.

Oath of witness.

Affirmation.

Rules of evidence

162. Every witness, before giving his testimony, shall be sworn that the evidence he will give relating to the matter in difference between the plaintiff and defendant, shall be the truth, the whole truth and nothing but the truth. A solemn affirmation shall, in all cases, have the same effect as an oath; and the rules of evidence in trials and proceedings before justices, shall, unless otherwise provided, be the same as in the circuit courts.

JUDGMENT.

When judgment to be entered.

163. When a suit is dismissed or withdrawn, judgment confessed, or the defendant is in custody, or has property under attachment, judgment shall be entered immediately. In other cases, judgment may be entered at any time within one week after the trial.

Offer to confess judgment.

164. The defendant may, either before suit is brought, or at any time afterwards before trial, make an offer in writing to confess judgment in favor of the plaintiff for the sum or property specified in such offer. If the plaintiff fail to accept the said offer before trial, or to give notice to the defendant of such acceptance, and do not recover a more favorable judgment, the justice, on proof of such offer being made, shall adjudge the plaintiff to pay all costs of the action from the time of the offer. If the offer so made be not accepted, it shall not be given in evidence against the defendant.

Judgment authorizing arrest.

165. When judgment is rendered in a case in which the defendant is subject to arrest and imprisonment, it must be so stated in the judgment and entered on the docket.

Justice may set aside judgment.

166. In any case not otherwise herein provided, the justice, on motion of either party, reasonable notice thereof being given to the other, may, on such terms and conditions as he shall see fit to impose, set aside his judgment within seven days after it is entered, and award a new trial, if satisfied that injustice has been done by the judgment to the party by whom the motion is made.

STAY OF EXECUTION.

How stay obtained.

167. The party against whom a judgment is rendered by a justice may, within ten days thereafter, obtain stay of execution thereon, in any case in which such stay is not prohibited by law, by filing with the justice an undertaking, signed by one or more sufficient sureties, to the effect that the amount of such judgment, including interest and

costs, shall be paid on the expiration of the stay. The justice shall note the undertaking on his docket, stating the names of the sureties, and the time of stay allowed. Upon such undertaking being filed within ten days, if execution has been previously issued, it shall be recalled by the justice.

Judgment against debtor and surety, if debt not paid.

168. If the judgment with interest and costs be not paid when the stay expires, the undertaking shall have the effect of a judgment confessed, and execution shall issue jointly against the judgment debtor and sureties who signed the undertaking. It shall be the duty of the justice to issue such execution, within three days after the stay expires, unless otherwise ordered by the party who is entitled to receive the money to be collected thereon.

Time of stay allowed.

169. When the judgment, exclusive of interest and costs, does not exceed ten dollars, such stay shall be for one month, if over ten and not over twenty dollars, for two months; if over twenty and not over fifty dollars, for three months; and if over fifty dollars, for four months.

In what cases, no stay allowed.

170. No stay of execution shall be allowed in the following cases: *First*, On any judgment upon an undertaking filed to obtain such stay; *Second*, On the judgment rendered on any other undertaking filed with a justice or given to a constable, pursuant to this act; *Third*, On any judgment against a justice or constable, for refusing or neglecting to pay as the law requires, money collected or received by such justice or constable in his official capacity; or against a constable for failing to make return, or making a false return of any process or order.

Judgment remains in force for benefit of security.

171. If any surety, who signed the undertaking given to obtain stay of execution, pay the judgment before or after the stay expires, the judgment against the principal shall remain in force for his use; and execution thereon may be issued by the justice on the application of such surety, after the expiration of the stay, with an endorsement on such execution showing for whom it is to be collected.

Security insufficient.

172. If the justice at any time before the stay expires become satisfied that the security taken on granting such stay is insufficient, he shall give notice to the judgment debtor, requiring additional security; and if it be not given within three days after service of the notice, he shall make entry of the facts on his docket, and forthwith issue execution on the judgment. But if additional security, to the satisfaction of the justice, be given within two weeks after the service of the notice, the execution, if issued in the meantime, shall be recalled, and the stay originally granted remain in force.

EXECUTION.

Who may issue execution.

173. Subject to the provisions of law in relation to cases in which stay of execution is granted, or the judgment is removed on appeal or error to the circuit court, executions for the enforcement of the judgment of a justice in a civil action, may be issued by the justice by whom such judgment was rendered, or his successor in office, or the justice with whom the docket on which such judgment is entered is

lawfully deposited, at any time within five years from the entry of the judgment, or the date of the last execution issued thereon. When.

174. If stay of execution be not granted within ten days after the judgment is rendered, or the cause be not removed on appeal or error to the circuit court within that time, it shall be the duty of the justice, on the expiration of the said ten days, to issue execution unless otherwise directed by the person entitled to receive the money collected thereon; and on the application of such person, the justice, in his discretion, may issue execution before the ten days expire. Duty of justice to issue after ten days. May do so before

175. Justices shall receive all money collected on execution or other process by them issued, and all money tendered to them on any judgment on their dockets, or any dockets lawfully in their possession, and pay the same on proper demand to the person entitled thereto. And for failure so to pay the same, he, and the sureties on his official bond shall be, jointly and severally, liable for such money to the person entitled thereto, with interest from the time of such demand, and ten per cent. on the principal, in addition, as damages. Justice to receive all money paid. Liability if he do not pay over.

176. The execution must be signed by the justice who issues it, and be directed to any constable of the county, or to the person deputed to execute it. It must intelligibly refer to the judgment by stating the names of the parties, the name of the justice by whom, the county and township in which, and the time when, it was rendered. It must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the money made to the justice, and return the execution with a certificate thereon, showing the manner in which he has executed the same, within sixty days from the time of his receipt thereof. It must state the principal sum for which the judgment was rendered, or the sum by which it may be discharged, the time the interest, if any be allowed, is to commence, and the costs to be collected; and if there be credits, they shall be stated thereon. But matter of form shall be disregarded, if the execution be substantially correct, and if there be errors and omissions therein, the same may be corrected or supplied by the justice at any time according to the truth. Requisites of the execution.

177. The summons, execution and all orders and process issued by a justice, except subpœnas, must be filled up without a blank that might be filled by another; otherwise they shall be void. Blanks in process.

178. If an execution be returned unsatisfied, or no return be made thereof, new executions may successively be issued after the return day of the former, to be endorsed respectively "second execution," "third execution," and so forth, as the case may be. New executions.

179. When a joint judgment is rendered against a principal debtor and his surety, if such suretyship appear by any evidence at the trial or paper filed in the cause, or by admission of the parties, to the satisfaction of the justice, he shall note the fact on his docket, and in such case, a memorandum thereof shall be endorsed on the execution, and the personal property of the principal debtor subject to execution within the jurisdiction, shall be first sold, unless the surety direct otherwise. Principal and surety.

Officer to endorse time he receives it.

180. The constable, or person deputed to execute the same, shall endorse on the execution the day and the hour when it came to his hands; and from that time it shall operate as a lien on the personal property of the judgment debtor liable to be seized under it; which lien however shall be divested in favor of any process in the hands of another officer, under which the property shall be first levied upon or attached. When there are several executions in the hands of the same officer against the same judgment debtor, they shall be executed in the order in which they were received; or if received together, all shall share alike, without preference to one over another.

Lien of execution.

When same officer has several executions.

Levy.

181. The officer, after taking into his custody the personal property levied on by virtue of the execution, shall endorse on the execution the property levied on and the time of levying the same, and immediately give public notice, by advertisement signed by himself, and posted at three public places within the township in which such property was taken, of the time and place, within such township, where it will be exposed to sale. Such notice shall describe the property to be sold, or contain a list thereof, and be posted as aforesaid at least ten days before the time of sale appointed. But when the property is of a perishable nature or expensive to keep, the justice may order the same to be sold at public auction at such time and place as he may direct.

Advertisement.

Time of sale.

Perishable property.

Sale—how and where.

182. All sales on execution by virtue of this act shall be at public auction in the township in which the property was levied on, between the hours of ten in the forenoon and four in the afternoon of the day appointed for the sale, and at the house or on the premises where the property was taken, or at one of the most public places in the township.

Hours.

Justice and constable not to buy

183. Neither the justice who issued, nor the officer holding the execution, shall purchase, directly or indirectly, any property sold on such execution. If either of them do so, he shall be fined not less than five nor more than one hundred dollars.

Expenses.

184. The officer shall be allowed by the justice the reasonable expenses of executing the process and keeping the property, out of the proceeds of sale, or be taxed and collected as other costs in the suit.

Return of execution.

185. The officer shall return the execution according to the command thereof, and pay the money made thereon to the justice, returning the excess, if any, to the person against whom the execution was issued. When any property is sold by him, he shall annex to his return a true inventory of each article sold, and the price at which it was sold. If the execution be not satisfied and any property remain in his hands unsold for want of bidders, he shall annex a true inventory of every article thereof to his return. If he fail herein, he shall be fined not less than five nor more than fifty dollars, and with the sureties on his official bond be jointly and severally liable to an action on the said bond in the name of the State for the benefit of the person injured thereby.

Property unsold —order to sell.

186. When an execution is returned unsatisfied in whole or in part, and there is property in the hands of the officer remaining unsold for

want of bidders, or other cause, it shall be the duty of the justice, unless otherwise directed by the person entitled to receive the money remaining uncollected, forthwith to issue his order commanding any constable of the county to whom such order is directed to sell the said property and pay over the proceeds thereof to the said justice; which sale shall be subject to the same regulations as sales on execution.

Security that property will be forthcoming.

187. Any constable or officer having levied on property of which he permits the party against whom the execution issued, or any other person, to retain or have possessson, may take such security, for his own indemnity, as he shall require, that such property shall be delivered at the time and place appointed for the sale thereof.

When property levied on is claimed by another.

188. When a constable or person deputed to execute the same, by virtue of an execution or order of attachment, has levied on or attached property claimed by any person other than the party against whom the execution or order issued, if such claimant or another for him, with one or more sufficient sureties, sign and file with the justice by whom the execution or order was issued, an undertaking to the effect, that such claimant, in any suit that may be brought on such undertaking within three months after the date thereof, will prove that he was the owner of the said property at the time of such seizure, or if he fail to do so, will pay the value thereof, the justice shall issue his order, directed to the officer having such execution or attachment, commanding him to deliver up the property to the said claimant; and such officer shall obey the same. The money, if any, which may be recovered on such undertaking shall be applied as the proceeds of such property would have been, if it had not been released as aforesaid.

Security given by claimant.

Trial of claimant's right.

189. Or, the claimant in such case, without giving the undertaking mentioned in the preceding section, may apply to any justice of the township in which the levy or attachment was made, for an order to a constable directing him to notify both the creditor and debtor to appear and show cause why the property should not be discharged from the levy or attachment. Such order shall be returnable in five days or less from the date thereof, and shall be served and returned by the constable according to the command thereof; but whether it be returned served or not, the justice on the return day thereof, or at such reasonable time thereafter as he may appoint for the purpose, shall hear the parties or such of them as attend, and dismiss the claim or order the officer to restore the property to the claimant, as the right shall appear; and the party prevailing shall recover his costs. The justice may also make any order necessary to prevent the property being sold before the right thereto is determined as aforesaid.

Appeal in such case.

190. Any party considering himself aggrieved by the decision of the justice under the preceding section, may appeal therefrom to the circuit court in like manner as from a judgment.

ARREST AND COMMITMENT AFTER JUDGMENT.

Commitment of defendant previously arrested.

191. When the judgment in a civil action before a justice is rendered against a defendant who is in custody under an order of arrest issued as hereinbefore provided, the justice, if, upon the whole evidence

produced in the cause, including the affidavit on which the said order of arrest was founded, he believe such defendant to have been guilty of the fraud alleged in such affidavit, may make and sign an order directed to the officer having the defendant in custody, commanding such officer to deliver his prisoner to the sheriff of the county to be committed to jail and there detained until lawfully discharged.

Arrest and commitment after judgment.

192. If, at any time after judgment against the defendant, there is filed in the office of the justice who is authorized to issue execution on such judgment, the affidavit or affidavits of one or more credible persons, made before any person authorized to administer oaths, stating the amount remaining unpaid on such judgment, and charging the defendant with fraud in any of the particulars mentioned in the forty-ninth section of this act, the justice shall, in such case, issue an order for the arrest and commitment of the defendant, on motion of the plaintiff.

Requisites of the order.

193. The said order may be issued to accompany the execution, or while an execution is outstanding if sufficient property has not been levied on to satisfy the same. It shall be dated the day it is issued, be signed by the justice, delivered to the officer holding the execution, if any be outstanding, and be returnable whenever executed; or if not executed, then within sixty days after its date. It shall state the names of the parties, the judgment and costs, with the credits, if any, thereon; and command the officer to arrest the defendant, and, unless he pay the amount due or surrender property sufficient to satisfy the same, to deliver him to the sheriff of the county to be committed to jail and there detained until lawfully discharged.

Undertaking to be filed by plaintiff.

194. But the order referred to in the last two sections shall not be issued until the plaintiff, or some one for him, with one or more sufficient sureties, shall sign and file with the justice an undertaking to pay the defendant all damages he may sustain by reason of the arrest and commitment, should it thereafter appear that the order was wrongfully obtained.

Defendant has same remedy.

195. If the defendant recover judgment against the plaintiff, he shall have the like remedy against the plaintiff by arrest and commitment.

Deliver to sheriff or jailor.

196. The officer, pursuant to the order mentioned in the one hundred and ninety-first and one hundred and ninety-third sections, shall deliver the prisoner to the sheriff or jailor of the county, with a certified copy of the said order, which copy shall be sufficient authority to

Copy of order.

the said sheriff or jailor to receive and keep the prisoner in jail until discharged according to law.

Term of imprisonment.

197. The prisoner, committed as aforesaid, may be kept in prison for ten days, and one day in addition for every two dollars over twenty due on the said judgment, unless he sooner pay the same.

Failure to arrest —escape.

198. The officer may at his peril omit to arrest any person under such order, or after arrest permit him to go at large, subject only to his liability for omitting to arrest or for an escape, if he fail to have the money forthcoming on the return of the order.

199. The sheriff or jailor receiving any person as aforesaid, or keeping him in jail, may, at any time, on notice to the party at whose suit such person is held, discharge the prisoner, unless their fees are paid and money furnished to pay the sustenance of such prisoner; or they may detain him, holding the said party liable for such fees and sustenance. When sheriff, &c. may discharge the prisoner.

200. The person committed, as aforesaid, shall be discharged at any time upon paying the sum due on the judgment, including all costs, or surrendering property sufficient to satisfy the same, or signing with one or more sufficient sureties, and causing to be filed with the justice an undertaking that he will pay the same within sixty days from the date thereof. Discharge on payment or security.

APPEALS.

201. In all cases an appeal shall lie, under the regulations herein prescribed, from the judgment of a justice to the circuit court of the county, when the amount exceeds ten dollars, exclusive of interest and costs, or the case involves the freedom of a person, the constitutionality or validity of a law, or the right of a corporation or county to levy tolls or taxes. In what cases appeals lie from judgments of justices.

202. The party desiring to appeal shall, within ten days after the judgment is rendered, sign and file with the justice an undertaking, with one or more sufficient sureties, to the effect that he will prosecute his appeal without avoidable delay, and if judgment be rendered against him on such appeal, will satisfy the judgment. Undertaking to be filed.

203. When there are two or more plaintiffs or defendants, any one or more of the plaintiffs or of the defendants may appeal, without joining therein the others on the same side. One of several plaintiffs or defendants.

204. On the filing of such undertaking, all further proceedings in the action before the justice shall cease. If any execution, order of arrest, or other process or order be outstanding, it shall be recalled by the justice, and if the appellant be in custody, he shall be discharged. Filing of undertaking—effect of.

205. The justice shall immediately make out and certify a complete transcript from his docket of all the proceedings before him in the action, and deliver or transmit the same, together with the said undertaking, the statements and bills of particulars, the depositions and all original papers in the cause, to the clerk of the circuit court of the county, on or before the second day of the term commencing next after such appeal. If the justice omit or refuse so to do, he shall be fined not less than five nor more than one hundred dollars; and, moreover, shall, with the sureties on his official bond, be liable to the party aggrieved for any loss or damage he may sustain thereby. Transcript and papers to be delivered to clerk. When.

206. The clerk of the circuit court on receiving the said transcript and papers, shall file the same and docket the appeal. The appeal shall be tried in a summary way, without pleadings in writing; but if it be demanded by either party, and the sum in controversy, or damages claimed, exceed twenty dollars, a jury of six shall be selected Clerk to docket appeal. How appeal tried

and impannelled to try the questions of fact, in like manner as other juries in said court. All lawful evidence produced in relation to the matters in difference between the parties shall be heard, whether such evidence was produced before the justice or not, and the cause shall be determined without reference to the judgment of the justice, on the principles of law and equity.

Delay in prosecuting appeal.

207. If the appellant do not prosecute his appeal without avoidable delay, the judgment of the justice shall be affirmed. If the court, in any case, be of opinion that the undertaking filed by the appellant is for any cause insufficient, or the security thereto doubtful, it shall order a new undertaking in proper form, and with sufficient security, to be given within a time specified in such order, and if it be not given, the judgment of the justice shall be affirmed.

Insufficient security.

When appellant to pay costs.

208. If the judgment of the justice be affirmed as aforesaid, or if upon the trial in the court the appellant do not increase the original judgment, if it was in his favor, or reduce it if it was against him, more than five dollars, exclusive of interest and costs, the appellant shall pay the costs of the appeal.

Judgment against appellant and sureties.

209. When the judgment appealed from is against the appellant for any sum of money, and such judgment is affirmed, or an equal or greater sum is found to be due by the appellant, judgment shall be rendered by the circuit court against the appellant and his sureties for the sum due, including interest and costs up to the time the appeal

Damages.

was taken, with damages on the aggregate at the rate of ten per cent. per annum from that time until payment, and the costs of the appeal.

When appellant recovers costs.

210. The appellant shall recover the costs of the appeal when the original judgment is reversed, or when a judgment of the justice in his favor is increased, or a judgment against him reduced in the circuit court, more than five dollars, exclusive of interest and costs.

Power of the court.

211. In all cases of appeal from a justice to a circuit court, the court (subject to the foregoing rules when they are applicable) may make any order during the progress of the cause which the principles of law or equity may require; and shall render judgment as the right shall appear, and proceed to enforce the same as other judgments of the court are enforced, without remanding the cause again to the justice.

Judgment for appellee.

The judgment in the circuit court, if in favor of the appellee, shall be against the appellant and his sureties.

Appeals may be granted by court or judge.

212. Appeals from the judgments of justices may be granted, after the expiration of the ten days, by the circuit court in term-time, or the judge thereof in vacation, when the party seeking the appeal shall deliver to the court or judge a proper undertaking, with sufficient security thereto as hereinbefore prescribed, and shall show by his own oath, or otherwise, that he was prevented from taking such appeal within the ten days by circumstances beyond his control.

Order to be made in such case.

213. In such case, if the appeal be granted, the court or judge shall make and certify to the justice an order directing him to cease

all further proceedings in the cause, and recall all executions and orders that may be outstanding for the enforcement of the judgment, and transmit, without avoidable delay, to the clerk of the said court a complete transcript from his docket of the proceedings in the suit, together with all the original papers relating thereto. Upon the receipt thereof by the clerk, the cause shall be proceeded with in the circuit court as in other cases of appeals from the judgment of the justices.

Order of court or judge granting appeal.

DOCKET.

214. Every justice shall keep a book denominated a "docket," to be furnished by the board of supervisors at the expense of the county, and to be used exclusively for entering therein his judicial proceedings.

Docket, by whom furnished.

215. He shall enter in the said docket the title of every action commenced before him, setting forth at full length the names of the parties, if known, and showing which are plaintiffs and which are defendants, and stating the time the action was commenced, and the amount of money or damages, or the specific property, which the plaintiff demands.

Title of action.

216. Underneath the title of the action he shall enter, at the times they occur, the following particulars, commencing the transactions or proceedings of every day with their proper date:

What to be entered in docket.

First, The date of the summons, the time it is returnable, and the name of the person to whom it is delivered to be served. The same particulars must be stated in relation to any order of arrest or attachment, which may be issued in the action; and if an order of arrest or attachment be issued, it shall be stated on whose affidavit it was founded;

Second, The return made to the process should be briefly noted;

Third, The name of the agent, attorney or guardian, if any, appointed on behalf of any party, should be stated; also,

Fourth, The filing by either party of his statement or bill of particulars, with a brief notice of the contents thereof;

Fifth, Every continuance, showing at whose instance it is made, and to what time. If made to a different place, it shall be so stated;

Sixth, The undertakings filed in the action by either party should be noticed, with the names of such party and his sureties;

Seventh, The docket should show which of the parties is present at the trial;

Eighth, When a jury is demanded, by whom such demand is made;

Ninth, The time appointed for the trial by jury;

Tenth, The names of the jurors failing or refusing to appear or serve, and the fines imposed on them, if any;

Eleventh, The names of the jury sworn;

Twelfth, The names of each witness sworn, and at whose request; the proceedings against, and fines imposed on, delinquent witnesses;

Thirteenth, The proceedings against any person for an alleged contempt;

Fourteenth, The verdict of the jury shall be set forth at full length If they cannot agree and are discharged, the fact shall be stated;

Fifteenth, The judgment of the justice shall be stated, with the items of the costs;

Sixteenth, The execution and orders to sell issued, to whom delivered to be executed, the renewals thereof, and the returns made on any such process, should be shown by the entries on the docket; also,

Seventeenth, Every sum of money received by the justice in the cause, showing when and by whom paid;

Eighteenth, The giving of a transcript from the docket, and to whom given;

Nineteeth, If an appeal be taken, by which party, the undertaking filed by him, by whom signed and when filed;

Twentieth, The undertaking filed for stay of execution, by whom signed and when filed, and the stay granted;

Twenty-first, The satisfaction of the judgment, and how and when satisfied;

Twenty-second, Any other proceedings in the action which the justice is by law directed to enter on his docket, or may think it necessary or proper to enter.

Form.

217. So far as the entries in the docket are concerned, the form shall be regarded as immaterial, if the truth be substantially stated so as to be intelligible to a person of common understanding and information.

Index of judgments.

218. Every justice shall keep an alphabetical index of all judgments entered in his docket. In such index shall be inserted the names of the parties to each judgment, with the page where the judgment is entered.

Cases to be numbered on docket.

219. He shall number the cases progressively on his docket, and shall correspondingly number the papers belonging to each case. He

Papers, how filed

shall keep all the papers of each case together, in packages of convenient size, and in the order the cases are numbered on his docket.

Effect of docket or transcript as evidence.

220. Whenever it shall be necessary to prove a judgment or other process had before a justice, or any process issued by him, or the return thereof, or any order made by him in a suit, the docket in which it is entered, or a transcript thereof certified by him or his successor in office, or the person lawfully having the custody of such docket, shall be received as evidence of the same, but shall not be conclusive if errors or omissions be shown.

Docket and papers to be delivered to successor.

221. Every justice, upon the expiration of his term of office, shall deposit with his successor his official docket, as well as those of his predecessors which may be in his custody, together with all papers relating to his judicial proceedings in their proper files and order, and all statutes received by him in his official capacity, to be kept by such successor as public records and property.

Custody of docket, &c, in case of vacancy.

222. If the office of a justice become vacant by death, removal from the township or otherwise, the dockets, papers, laws and statutes in the possession of such justice by virtue of his office, shall be delivered to the other justice, if there be one, of the township; otherwise, to the clerk of the township; to remain in his custody until such vacancy

is filled, and then to be delivered to the person elected and qualified to fill such vacancy.

In case of absence.

223. Any justice absenting himself from his township for a longer period than sixty days, shall deposit the dockets, papers and books, which came to his hands by virtue of his office, with the other justice, if there be one of the same township; otherwise, with the clerk of the township. The board of supervisors of the county may, however, at their option, consider the justice so absenting himself as having thereby vacated his office, and may order an election to fill the vacancy.

Receipt to be given.

224. Any person receiving, as aforesaid, the dockets, papers, laws and statutes which were in the possession of any justice by virtue of his office, shall, if requested, give a receipt therefor to the person delivering the same.

Authority of justice with whom docket is deposited.

225. A justice with whom the docket of another is lawfully deposited during vacancy or absence, or as the successor of such other justice, is hereby authorized, while such docket remains lawfully in his custody, to issue execution or other process thereon, give and certify transcripts thereof, and do all such other acts in relation thereto as he may do in relation to his own docket. But executions and process so issued, shall be returned to the justice who may have the legal custody of the said docket on the return day thereof.

How custody of docket, &c., is decided.

226. When two justices are elected in any township in place of two others, the board of supervisors of the county shall, by resolution, declare as to each of those going out of office which of the two elected shall be deemed his successor.

CONTEMPTS.

In what cases justice may punish for contempt.

227. A justice may punish as for a contempt, persons guilty of the following acts, and no others: *First*, Disorderly, contemptuous or insolent behaviour towards the justice, while engaged in the trial of a cause, or in any judicial proceeding, if such behaviour tend to interrupt the proceedings or impair the respect due to his authority; *Second*, Any breach of the peace, boisterous conduct, or wilful disturbance tending to interrupt the judicial proceedings of a justice; *Third*, Wilful resistance in presence of the justice to the execution of any lawful order or process made or issued by him.

proceedings.

Judgment.

228. An order of arrest may be issued by a justice, on which the person so guilty may be taken and brought before him, or such person may be taken in custody by any officer present, upon the oral order of the justice, and held to answer for the contempt. An opportunity must be given him to be heard in defence or explanation of his conduct; and the justice may thereupon discharge him, or adjudge him guilty of the contempt, and punish him by fine or imprisonment, or both. The fine shall not exceed ten dollars, or the imprisonment three days.

Enforcement of judgment.

229. The conviction, specifying the particular circumstances of the offence and the judgment thereon, must be entered by the justice in his docket. A warrant of commitment for the term of imprisonment

adjudged, may then be issued by the justice, commanding any constable to take the offender to the jail of the county, and the jailor to imprison him therein for the said term. The judgment for the fine may be enforced as other judgments of justices and may include in addition to the fine as aforesaid, all costs in the case, including the costs of arresting and keeping in prison the offender.

CONSTABLES.

To attend trials.

230. The constable shall attend all trials in which he may have served process, and preserve order and enforce the lawful commands of the justice during the same.

Duty to execute and return process.

231. It shall be the duty of the constable, on receipt of any summons, order, execution or other process, except a subpœna, to note thereon the time of receiving the same; to serve and execute the same, subpœnas included, according to the command thereof and the provisions of law; to make true return thereof to the proper justice on the return day, stating in such return the time and manner of executing the same; and to pay all money received by him in his official capacity, to the justice before whom the suit or proceeding is pending.

To pay all money to the justice.

Authority.

232. In serving and executing the orders and process issued by a justice, the constable may exercise the same authority over persons and property as it would be lawful for a sheriff to exercise under like orders or process from the circuit court.

Liability.

233. Every constable who shall neglect or refuse to serve or execute any lawful process or order in his hands, when in his power to do so, or shall make a false return thereon, or shall fail to return the same on the return day thereof, or shall fail to perform any duty incumbent on him by law, shall, with his sureties, be liable on his bond to the person sustaining injury thereby, to the extent of such injury, with ten per cent. damages thereon.

To deliver over process, &c., to successor.

234. Every constable on going out of office, shall deliver to his successor all process and orders in his hands, with his proceedings thereon endorsed, and also all property levied on, or attached, and remaining unsold, and take such successor's receipt therefor, including in different receipts the process and orders from different justices, and shall return such receipts respectively to the proper justices, who shall enter the same on their dockets and carefully preserve the originals. Upon the death of a constable, the same duty shall devolve on his personal representative.

MISCELLANEOUS.

Judgment in favor of deceased person—how revived.

235. Judgment in favor of any deceased person, may be revived in favor of his personal representatives, by an order of the justice to that effect, entered on his docket, or any docket lawfully in his possession, at least three days notice being first given to the adverse party to show cause, if any he have, why such order should not be entered.

Judgment against deceased.

236. If the judgment be against a deceased person, and the plaintiff desire to obtain judgment thereon against the personal representatives of the deceased, he shall proceed by summons or otherwise, as for the commencement of a new suit.

237. The remedy for the recovery of rent shall remain as heretofore. Rent.

238. No justice, or constable of the same township, shall purchase any judgment, or any interest in a judgment, on the docket of such justice or any docket in his possession. Every person violating this provision shall, for every such offence, forfeit not less than ten nor more than one hundred dollars. Justice and constable not to buy judgments.

239. The common law and statute laws now in force relating to suits and proceedings before justices, and to the powers, duties and compensation of justices and constables, shall continue in force so far as they are not inconsistent with this act. Former laws.

CHAP. 123.—An ACT prescribing Taxes on Licenses.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

1. The yearly tax on licenses to be paid into the state treasury shall be as follows: On every licence to keep a hotel or tavern, if the yearly rental of the house and property is less than one hundred dollars, five dollars; if the yearly rental exceeds one hundred and is less than two hundred dollars, ten dollars; and if the yearly rental value thereof exceeds two hundred and is less than three hundred and fifty dollars, fifteen dollars; and if more than three hnndred and fifty dollars and less than five hundred dollars, twenty dollars; if more than five hundred and less than eight hundred, twenty-five dollars; if more than eight hundred and less than one thousand, thirty dollars; and where the yearly rental of such house and property exceeds one thousand dollars five per centum on such excess shall be added. Every house where food or lodging is furnished to travelers or transient visitors, and payment required therefor, shall be deemed a hotel or tavern for the purposes of this act. Tax on license to keep a hotel or tavern. What constitutes a hotel or tavern.

2. On every license permitting theatrical performances to which admittance is obtained for money or other reward, ten dollars for each week, or less, of such performances. Theatre.

3. On every license permitting the sale of drinks or refreshments in a theatre, during such performances, one hundred dollars for each place of sale; and no abatement shall be made notwithstanding the privilege be not exercised for the period of a full year. Sale of refreshments in theatre

4. On every license to sell by retail, native wine, porter, ale or beer, twenty dollars, and if continued more than a year by the same person, whether alone or in connection with another party, an additional tax of two per centum on the amount of sales of the preceding year. Sale of native wine, porter, ale or beer, at retail.

5. On every license to sell spirituous liquors, foreign wines or a mixture thereof, or any drink of like nature, one hundred dollars. Sale of spirituous liquors.

6. On every license permitting a bowling saloon or alley to be kept for a year, fifty dollars; provided, that where there is more than one such alley kept in any one room, fifteen dollars each shall be charged for the excess over one. Bowling alley.

Billiard tables.

7. On every license permitting a billiard table to be kept for a year, one hundred dollars; provided, that where there is more than one such table kept in any one room, fifty dollars each shall be paid for the excess over one table.

Public shows.

Circus.

Menagerie.

Side shows.

8. On every license permitting any public show, not a circus or menagerie, for each time of performance, ten dollars; and for every exhibition of a circus forty dollars, and for every exhibition of a menagerie, twenty dollars. All such shows, exhibitions and performances, whether under the same canvass or not, shall be construed to require a separate license therefor; and upon any such shows, exhibitions and performances being concluded so that an additional fee for admittance be charged, the same shall be construed to require an additional license therefor.

Non-resident dentist.

9. On every license to a non-resident dentist, ten dollars.

Non-resident daguerrean or photographist.

10. On every license to a non-resident Daguerrean or photographist or any person engaged in any art or business of a like kind, ten dollars; and every one who has not resided in this State continuously for one year next preceding the issuing of such license, shall be deemed a non-resident under this and the preceding section of this act.

Sale of patent rights.

11. On every license to sell or barter patent rights, ten dollars.

Peddlers.

Proviso as to colporteurs.

12. On every license to a hawker or peddler or itinerant vender of goods, wares and merchandize, if traveling on foot without a horse or horses, ten dollars; and if with one or more horses, with or without a wagon or vehicle of any kind, twenty-five dollars. Provided, that nothing herein shall be construed to require colporteurs, or persons selling religious books or tracts only, to have license therefor.

Stock brokers.

13. On every license to a stock broker who deals exclusively in stocks, two hundred and fifty dollars, and he shall thereon have the right to sell stocks at auction or otherwise.

Brokers.

14. On every license to a broker or private banker who carries on for himself or any other person the business of buying and selling uncurrent money or funds, or exchanging one kind of money or funds for another, two hundred and fifty dollars; if located in a city with a population exceeding fifteen thousand, five hundred dollars.

Auctioneers.

15. On every license to an auctioneer or vendue master commencing business, twenty-five dollars; and if the place of business be in a town containing a population of two thousand inhabitants, thirty-two dollars; if the population exceeds three thousand, an additional tax of fifteen dollars for every thousand persons above that number, and at that rate for any fractional excess less than one thousand; but said specfic tax shall in no case exceed three hundred and fifty dollars. On every license to an auctioneer or vendue master to continue the business after the same has been carried on for a year, one per centum upon the amount of sales of such auctioneer or vendue master; but in no case shall the tax on such sales exceed one thousand dollars.

Agents for foreign insurance companies.

16. On every license to any agent of a foreign insurance company commencing business after the first day of February, in any year, at

the rate of fifty dollars for every such company for which he acts, except in towns or cities containing a population of three thousand or upwards, in which cities or towns the license shall be one hundred dollars per annum.

Agents for express companies.

17. On every license to a person or company, carrying on any express business for compensation, or who shall act as principal agent of such person or company, who may commence business after the first day of February in any year, at the rate of two hundred dollars per annum. Upon payment of the tax hereby imposed, the said express company shall have the privilege of transacting business by its agents anywhere within the State.

Laws repealed.

18. Sections X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXVIII, XXXIX, and XL, of chapter forty of the Code of Virginia, second edition, are hereby repealed.

CHAP. 124.—An ACT to provide for the relief of the families of soldiers.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Boards of supervisors authorized to lay levy on taxble property of their counties.

The boards of supervisors of each county are hereby authorized, from time to time during the war, at any stated or special meeting, to levy so many cents on every hundred dollars value of the taxable property of their county, as they shall deem necessary, to provide adequate funds for the relief of the families of living and deceased soldiers of their county. But if any special meeting be called for such purpose, at least seven day's notice of the object of such meeting must be given to the supervisors constituting the board.

CHAP. 125.—An ACT in relation to the Board of Directors for the West Virginia Hospital for the Insane.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Appointment of board. Number and apportionment of same.

1. The governor shall, as soon as practicable, appoint a board of directors for the West Virginia Hospital for the Insane, consisting of seven persons, of whom not more than two shall be selected from the county of Lewis, and not more than one of the others shall be selected from any one county. Their term of office shall commence on the first day of January, eighteen hundred and sixty-four, on which day they shall hold their first meeting in the town of Weston. When assembled, they shall divide themselves into two classes, the first to consist of three members who shall hold their office for one year, and the second class to consist of four members who shall continue in office for two years. After the first appointment each class shall continue in office for two years, and when vacancies occur by the provisions of this act, or otherwise, the governor shall fill them by appointment.

Commencement of their term.

First meeting.

Regular term.

Vacancies.

Style as body corporate.

Said board is hereby constituted a body corporate by the name of the "West Virginia Hospital for the Insane," and by that name may sue and be sued, and shall have and use a common seal, and are authorized to take charge of the hospital and of any real or personal estate given or to be given to it, or to themselves for its use; and shall be invested with all the rights, powers and privileges conferred, and subject to the rules, regulations and restrictions imposed by the eighty-fifth chapter of the Code of Virginia, second edition, so far as the same are applicable and not inconsistent with this act; provided, that any two or more of such directors may examine persons brought to the hospital as lunatic, and order those found to be such to be received.

Authority as such.

How governed.

Examination of patients.

Treasurer and his duties.

2. The board shall at their first meeting appoint a treasurer, who shall give bond in such penalty as shall be approved by the board. He shall receive all money belonging to the hospital and disburse it under orders of the board, and settle his accounts as treasurer, semi-annually. His draft on the treasury for an appropriation shall be under the order of the board, a copy of which shall accompany the draft; no such draft shall be allowed by the auditor until all money drawn for the year preceding shall be accounted for.

Report of board to the governor.

3. The board now in office shall, on or before the first day of January next, and the board of directors shall annually thereafter, on or before the first day of January, report to the governor, for the information of the legislature, the condition of the hospital, with a full account of their contracts, receipts, disbursements and proceedings.

Law repealed.

Proviso.

4. The sixteenth section of the eighty-fifth chapter of the Code of Virginia, second edition, is hereby repealed; but the board of directors now in office shall remain in office and continue to discharge the duties thereof until the first day of January next.

CHAP. 126.—An ACT making additional Appropriations.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

There is hereby appropriated for the purposes herein specified, the following sums, viz:

For expenses of legislature,

For expenses of the legislature, for the session commencing the twentieth day of June, eighteen hundred and sixty-three, including pay of officers, printing, stationery, rent of Linsley Institute, from the twentieth of June to the eighth day of December, eighteen hundred and sixty-three, furniture, flag, &c., thirty-seven thousand five hundred dollars.

And civil offices.

For salaries of officers of civil government, one thousand dollars.

Expenses of judiciary.

For salaries and mileage of judges of supreme court of appeals, and judges of circuit courts, seven thousand dollars.

For the salary of the clerk of the supreme court of appeals, five hundred dollars.

For contingent expenses of courts, one thousand dollars.

For criminal charges, including witnesses, jurors, and jailors' fees, two thousand dollars.

For expenses of convicts in jail prior to the twentieth day of June, eighteen hundred and sixty-three, one thousand dollars. Convicts.

For expenses of convicts in jail since the twentieth day of June, eighteen hundred and sixty-three, one thousand five hundred dollars.

For expenses of lunatics in asylums in other states, in jails and other places, two thousand dollars. Lunatics,

For contingent expenses of auditor's office, including stationery, printing, books, postage and fuel, two thousand dollars. And auditor's office.

For public printer, one thousand five hundred dollars. Public printer.

For salary of quarter-master general, five hundred dollars. Quarter master general.

For contingent expenses of quarter-master general's office, one thousand dollars.

For salary of clerk in auditor's office, three hundred dollars. Auditor's clerk.

For salary of clerk in adjutant general's office, three hundred dollars. Adjutant general's clerk.

For salary of vaccine agent, one hundred dollars. Vaccine agent.

For expenses of procuring seals and presses for state, courts, and recorders, one thousand two hundred dollars. Seals.

For expenses of coroner's inquests, two hundred dollars. Coroner's inquests.

To pay militia claims provided for by act passed nineteenth November, eighteen hundred and sixty-three, entitled "An Act providing for the payment of certain militia claims allowed by regimental courts," six thousand dollars. Militia claims.

To John W. Boner, commissioner for taking soldiers' vote on amended constitution, twenty-two dollars and sixty cents. John W. Boner.

To John S. McDonald, for same kind of services, forty dollars. John S. McDonald.

To Henry Startzman, for same kind of services, forty dollars. Henry Startzman.

To M. B. Reed, for same kind of services, thirty-four dollars. M. B. Reed.

To John Bowyer, for same kind of services, thirty-two dollars. John Bowyer.

To J. P. B. R. Smith, for same kind of services, thirty-two dollars. J. P. B. R. Smith

To. S. G. W. Morrison, for same kind of services, twenty-eight dollars. S. G. W. Morrison.

To John Goudy, for same kind of services, thirty dollars. John Goudy.

To Sylvanus W. Hall, for same kind of services, sixty dollars. S. W. Hall.

To D. S. Montague, for same kind of services, fifty-two dollars. D. S. Montague.

To Joseph Odell, for printing governor's proclamation for executive committee, twelve dollars. Joseph Odell.

To Campbell & McDermot, for printing for executive committee, in May and June, eighteen hundred and sixty-three, two hundred and fifteen dollars. Campbell & McDermot.

For expenses of holding election on the twenty-sixth day of March, eighteen hundred and sixty-three, on the amended constitution in Wirt county, twelve dollars. Election in Wirt

For expenses of holding election on the twenty-sixth day of March, eighteen hundred and sixty-three, on amended constitution in Jackson county, seventy-two dollars. Election in Jackson.

To C. M. Rice, John H. Wetzel and David Woodruff, of Jackson county, for holding an election for senator, by order of Governor Peirpont, in June, eighteen hundred and sixty-one, twenty-five dollars. C. M. Rice, John Wetzel, and David Woodruff.

Joseph Jenkins. To Joseph Jenkins, of Preston county, for claim audited and allowed by joint committee on claims, ninety-two cents.

A. T. Holt. To Alfred T. Holt, of Preston county, for claim audited and allowed by same committee, one hundred and ninty-three dollars and eighty-seven cents.

M. F. Stuck. To Matthias F. Stuck, of Preston county, for claim audited and allowed by same committee, twelve dollars and eighty cents.

W. T. Frailey. To William T. Frailey, of Preston county, for claim audited and allowed by same committee, twenty-one dollars and sixty-five cents.

W. S. Fansler. To William L. Fansler, of Preston county, for claim audited and allowed by same committee, twelve dollars and seventy-nine cents.

S. N. Pearce. To Samuel N. Pearce, of Preston county, for claim audited and allowed by same committee, five dollars.

James Miller. To James Miller, of Preston county, for claim audited and allowed by same committee, twelve dollars and thirty cents.

Smith Crane. To Smith Crane, of Preston county, for claim audited and allowed by same committee, twenty-two dollars and fifty-nine cents.

Lydia Hethrington. To Lydia Hethrington, of Preston county, for claim audited and allowed by same committee, twenty-seven dollars and thirty cents.

J. H. Manown. To James H. Manown, of Preston county, for claim audited and allowed by same committee, thirty dollars.

Jacob Weaver. To Jacob Weaver, of Preston county, for claim audited and allowed by same committee, forty-seven dollars and twenty-five cents.

Joseph Brown. To Joseph Brown, of Preston county, for claim audited and allowed by same committee, twenty-nine dollars and thirty-nine cents.

Wm. Ewing. To William Ewing, of Ohio county, on claim audited and allowed by same committee, forty dollars and twenty-five cents.

A. B. Fleming. To A. Brooks Fleming, of Marion county, for claim audited and allowed by same committee, seven dollars.

J. M. McWhorter. To J. M. McWhorter, of Roane county, on claim audited and allowed by same committee, thirty-two dollars and seventy-four cents.

Expenses of lunatics at Weston For current expenses for maintaining lunatics in the hospital at Weston, one thousand eight hundred dollars.

Board of public works. For contingent expenses of the board of public works, fifty dollars.

Election in Boone. For expenses of holding election on amended constitution, on March twenty-sixth, eighteen hundred and sixty-three, in Boone county, twenty dollars.

Janitor to executive offices. To janitor to executive offices, one hundred dollars.

Alfred A. Hagar To pay Alfred A. Hagar for time and money spent in traveling and organizing Captain Joseph H. Barker's company of state troops at Brownstown, in June, eighteen hundred and sixty-three, seventeen dollars.

D. D. T. Farnsworth. To pay D. D. T. Farnsworth, a member of the joint special committee, to visit the lunatic asylum at Weston, twenty-eight dollars.

L. E. Davidson. To pay L. E. Davidson, a member of said committee for same service, twenty-eight dollars.

Lewis Ballard. To pay Lewis Ballard, a member of said committee, for same service, twenty-eight dollars.

Wm. P. Hubbard. To pay William P. Hubbard, clerk of the senate committee on military affairs, twenty-four dollars.

CHAP. 127.—An ACT confirming the election of George S. M. King.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

As sheriff of Jackson.

The election of George S. M. King, at the election held in Jackson county on the twenty-second day of October, in the year one thousand eight hundred and sixty three, to the office of sheriff of said county, is hereby legalized; and he shall have sixty days from the passage of this act within which to take the oaths and give the bond required by law.

Time allowed to qualify.

CHAP. 128.—An ACT to permit the handwriting of subscribing witnesses to be proved in certain cases.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Where witnesses have gone into the rebellious states.

When a subscribing witness to a will or other instrument of writing is within the so-called Confederate States, or any territory under control of the rebel army, his handwriting may be proved as if he were dead, and with the same effect.

CHAP. 129.—An ACT authorizing the publication of an extra number of the laws.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Clerk of House of Delegates authorized to contract with public printer.

The clerk of the house of delegates is hereby authorized to contract with the public printer for printing, in addition to the number heretofore ordered, three thousand five hundred copies, in pamphlet form, of the laws passed at the present session of the legislature, at a cost not exceeding seventeen cents per copy, unless the number of pages exceed one hundred and sixty, in which case he may be allowed one cent on every ten pages over that number, to be delivered by such clerk, one-third to the members of the senate and two-thirds to the members of the house of delegates, in numbers proportioned to the population represented by them, for distribution among the voters of their several districts and counties.

Distribution of copies.

CHAP. 130.—An ACT to require Justices to discharge certain duties heretofore performed by Coroners.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Justice to issue warrant to constable.

1. Every justice upon being notified that the dead body of a person, whose death is supposed to have been caused by violence or other unlawful act, and not by casualty, is within his township, shall forthwith issue his warrant directed to a constable thereof, who shall proceed to execute and make return of the same, commanding such constable to

To summon jury of inquest,

summon twelve suitable residents of the said township to be in attendance on such justice as jurors, at a place and on a day and hour, to be designated in the warrant, to make inquisition upon the view of the body of the person named therein, or of a person unknown as the case may be, how such person came to his death; and may, by endorsement on such warrant, or by subpœna, command the officer to whom the same is delivered to summon such witnesses as the justice

And witnesses.

may designate, or as the constable may be informed or have reason to believe have knowledge of the circumstances attending such death, to be in attendance upon the said inquest at such time as may be designated in such endorsement or subpœna. In case of the inability or

Failure to act of justice or constable.

failure of such justice or constable to act, any other justice or constable of the county may perform the respective duties imposed by this and the succeeding section, and be entitled to the same fees and subject to the same penalties.

Government of proceedings.

2. The subsequent proceedings in any such case as is mentioned in the preceding section, shall be in accordance with and governed by the provisions of the third and following sections of the two hundred and second chapter of the Code of Virginia, second edition, except the last clause of the eleventh section, which is hereby repealed; and except that the word "coroner," wherever it occurs, shall be construed to mean the justice who issued the warrant as aforesaid; the words "unlawful violence," in the sixth section, to mean violence or other unlawful act; the words "county or corporation court," in the ninth section, to mean circuit court of the county in which the dead body was found; and the words "the court of the coroner's county or corporation," and the word "treasury," in the ninth section, to mean, respectively, the board of supervisors and the treasury of such county.

Fees of justice and constable.

For their services under this and the preceding section, the justice shall be entitled to a fee of five dollars, and the constable to a fee of three dollars, to be audited and paid from the treasury of such county as other claims are audited and paid.

Chap. 131.—An ACT for the collection of Taxes.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

By whom taxes collected. When collection to begin.

1. The taxes assessed in any county shall be collected by the sheriff or collector thereof. Each sheriff or collector shall commence his collection yearly on the first day of July, or as soon thereafter as he may receive a copy of the assessor's books, and may, after such

Distraint in case of removal of property.

time, make distress therefor when the tax-payer is about to remove the property from the county.

Payment of taxes on lands by non-residents.

2. A person not residing in the county in which his land may lie, may, before the first day of October in any year, pay into the treasury, in advance, the taxes assessed on such land for such year, upon a certificate of the auditor, for which a fee of fifty cents shall be paid to that officer. A list of such payments shall be transmitted by said

auditor, immediately after the first day of October, to the sheriffs or collectors of the counties wherein such lands shall be situated, who shall be governed accordingly.

Collector's notice

3. It shall be the duty of the sheriff or collector to give notice by posting at the public place of meeting of the people of each township, and at two other public places in the township, for at least thirty days before the time appointed, that he will attend at such place, on three several days to be fixed by him, one of which, if practicable, shall be a day fixed for a public meeting of the people of said township, between the first day of September and the first day of November following, for the purpose of receiving taxes due by the people residing or paying taxes in said township, and that he will make a discount of two and a half per centum to all such persons as shall pay all their taxes on or before either of the said days, and not otherwise; which discount the said sheriff or collector shall allow out of the per centage allowed to him for collecting said taxes,

And discount.

Cases where distress for taxes prohibited.

4. No distress shall be made for taxes or levies where the sheriff or collector has had more than two years to collect the same, except in counties where the collection of taxes is rendered unsafe or dangerous by reason of war or other like cause, unless it be for taxes returned delinquent and sent out by the auditor for collection, as provided by law. But a sheriff or collector of a former term may, notwithstanding the expiration of his term of office, by himself or his deputies, have the same powers of distress and sale as he possessed before said term expired, and which right of distress and sale shall continue for the term of two years from the time such right accrued, except in counties where the collection of taxes is rendered unsafe or dangerous by reason of war or other like cause; but no deputy shall be permitted to qualify for such collections after the principal's office has expired.

Sheriff's powers of distress and sale after expiration of term.

But qualification of deputy forbidden.

Time of distraint for taxes.

5. Any goods or chattels in the county belonging to the person or estate assessed with them, may be distrained therefor by the sheriff or collector, after the first day of November in each year.

Distraint of property of tenants.

6. The goods and chattels of the tenant or other person in possession, claiming under the party or estate assessed with taxes on land, may be distrained if found on the premises. But when taxes are assessed wholly to one person on a tract or lot of land, part of which has become the freehold of another by a title recorded before the commencement of the year for which such taxes are assessed, the property belonging to the owner of that part shall not be distrained for more than a due proportion of said taxes.

Distraint where land lies in two counties.

7. Where taxes are assessed on a tract of land lying partly in one county and partly in another, the sheriff or collector of the county in which the taxes are so assessed, may distrain on that part of the land lying in the other county, in the same manner as if such part were in his own county.

Distraint where there are deeds of trust or mortgages.

8. No deed of trust or mortgage upon goods or chattels shall prevent the same from being distrained and sold for taxes assessed against

the grantor in such deed, while such goods and chattels remain in the grantor's possession; nor shall any such deed prevent the goods and chattels conveyed from being distrained and sold for taxes assessed thereon, no matter in whose possession they may be found.

Where property cannot be found, debts owing from or property in the hands of others may be attached.

9. When the officer cannot find sufficent goods or chattels to distrain for taxes, any person indebted to or having in his hands estate of the party assessed with such taxes, may be applied to for payment thereof out of such debt or estate, and a payment by such person of the said taxes, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. If the person applied to do not pay so much as it may seem to the officer ought to be recovered on account of the debt or estate in his hands, the officer shall, if the sum due for such taxes do not exceed one hundred dollars, procure from a justice a summons directing such person to appear before some justice at such time and place as may seem reasonable; and if the sum due exceed one hundred dollars, he shall procure from the clerk of the circuit court of the county a summons directing such person to appear before the circuit court for the county on the first day of the next term thereof. And from the time of the service of any such summons, the said taxes shall constitute a lien on the debt so due from such person, or on the said estate in his hands.

Proceedings in attachment.

10. If such summons be returned executed, and the person so summoned do not appear, judgment shall be entered against him for the sum due for such taxes, and for the fees of the clerk and of the officer who executed the summons.

11. If the person so summoned appear, he shall be interrogated on oath, and such evidence may be heard as shall be adduced, and such judgment shall be rendered as upon the whole case may seem proper.

Credit to tenant for payment of taxes against owner.

12. A tenant from whom payment shall be obtained by distress or otherwise, of taxes due from a person under whom he holds, shall have credit for the same against such person out of the rents he may owe him, except where the tenant is bound to pay such tax by an express contract with such person.

And to fiduciary for payment of taxes against estate.

13. Where a tax is paid by a fiduciary on the principal, interest or profits of money of an estate laid out or invested, either under an order of court or otherwise, the tax shall be refunded out of such estate.

Collectors' delinquent lists.

14. The sheriff or other collector, after ascertaining which of the taxes assessed in his county cannot be collected, shall as soon as practicable, in each year, after the first day of October, make out lists of three classes: First, a list of property on the assessor's land book improperly placed thereon, or not ascertainable, with the amount of taxes charged on such property; secondly, a list of other real estate which is delinquent for the non-payment of the taxes thereon; and thirdly, a list of such of the taxes so assessed, other than on real estate, as he is unable to collect; which lists shall designate the delinquencies of each township separately.

15. In the lists mentioned in the preceding section, the names of the persons charged with the taxes, shall be placed alphabetically. The list mentioned secondly, shall be in the following form:

"*List of real estate in the county of——delinquent for the non-payment of taxes thereon, for the year—*

Name of person.	Residence.	Estate held.	Quantity of land.	Description and location of land.	Distance & bearing from court house.	Amount of taxes.	Why returned delinquent.

And the sheriff or collector returning such list, shall at the foot thereof make and subscribe the following oath: "I, A. B., sheriff (or collector) of the county of——do swear, that the foregoing list is, I verily believe, correct and just; that I have received no part of the taxes for which the real estate therein mentioned is returned delinquent; and that I have used due diligence to find property within my county liable to distress for the said taxes, but have found none." Form of collector's affidavit.

16. The lists mentioned first and thirdly in the fourteenth section, shall each of them be verified by the oath of the sheriff or collector, and a copy of that mentioned thirdly, shall be posted at the front door of the court house of the county, on a court day, or during the sitting of the board of supervisors next preceding or during the term, or sitting at which the list may be presented to the board of supervisors. Delinquent lists to be sworn to, And one publicly posted.

17. If by reason of war or other like cause, it be rendered unsafe and dangerous to collect the taxes in any portion of any of the counties within the regular period for the collection of the same, the sheriff or collector shall make out lists of such taxes; not collected from such cause, as provided for in sections fourteen and fifteen, and return the same as required in said sections for other lists; and the sheriffs or collectors of the present year, or of any former term, may, notwithstanding the expiration of their term of office, by themselves or their deputies, make out such lists and return the same at any time within six months after the passage of this act. Lists of taxes uncollected in disturbed counties. Collectors allowed to make and return same after expiration of term.

18. Each of the before named lists shall be presented to the board of supervisors of the county, and examined by said board. The board having become satisfied of the correctness of the said lists, or having corrected them if erroneous, shall direct their clerk to certify copies thereof to the auditor, and a copy of the first mentioned, to the assessor, who shall correct his books accordingly. The original lists shall be preserved by the clerk in his office. After the said copies are so certified, the sheriff or collector shall not receive any of Delinquent lists to be paid before boards of supervisors, And certify to the auditor, And collectors forbidden thereafter to receive such taxes.

the taxes mentioned in the said lists, but they may be paid into the treasury, or the personal property tax may be paid to the county treasurer, who shal be accountable therefor in like manner as for any revenues or taxes that may come into his hands.

Payment of same into treasury.

Penalty for false return as delinquent.

19. Any officer who shall return in any such list real estate, persons or property, as delinquent for the non-payment of taxes, when such taxes, or any part thereof shall have been actually received by him, shall forfeit, if the return was by design, ten times the amount of taxes so actually received, and if the return was by mistake, twice the amount; one-half of which forfeiture shall in each case be to the State, and the other half to the persons charged with such taxes. And any such officer who shall return in such list any real estate, persons or property as delinquent, when he had either found or might have found sufficient property within his bailiwick liable to distress for the taxes for which such real estate, persons or property are returned delinquent, shall forfeit to the State a sum equal to five times the amount of the said taxes.

Disposition of the certified copies of delinquent lists.

Duty of auditor respecting same.

20. The copies of the lists directed to be certified to the auditor, shall be placed by the clerk in a sealed enclosure directed to that officer, and delivered to the sheriff or collector by whom the lists were returned. The auditor shall credit the sheriff or collector with the amount of taxes mentioned in such lists, if the said lists be presented at his office before the first day of May next after the said taxes were assessed, or within six months after the passage of this act, but not otherwise.

Regulations respecting the delinquent lists.

21. The lists required by the fourteenth section of this act to be made out by the sheriff or collector, shall not be allowed unless they have been first submitted to the assessor for the district to which they relate, or in case of his death, to some other assessor, or a commissioner to be appointed by the board of supervisors, or the clerk of the said board, touching the propriety of such lists, and each case therein contained verified by the oath of the sheriff or collector. Copies of the second and third lists heretofore returned, and of the third list mentioned in the said section, when it shall hereafter be allowed, shall be placed by the auditor in the hands of any sheriff or collector of any county for collection, to be returned within one year thereafter, and accounted for as other assessed taxes; or if the auditor see fit, he may place such copy in the hands of any constable as collector, who shall have the same power of distress as sheriffs or collectors, and shall account for the same in like manner, and he and his securities shall be subject to all such remedies as are given the state against sheriffs for failure to pay; and his compensation shall not exceed twenty per centum of the amount collected and paid into the treasury.

22. The list mentioned in the seventeenth section of this act shall be returned by the auditor to the sheriff or his successor, whenever the obstructions to the collection of the taxes therein contained shall be removed, who shall proceed to collect and account for the same, as in other cases.

Payment into the treasury of taxes collected.

23. The taxes assessed under the law providing for the assessment of taxes on persons and property, and collected under this act, shall be paid into the treasury as follows: Three-fourths of such taxes shall be paid on or before the fifteenth day of December in the year in which the same may be assessed, and the remaining one-fourth thereof on or before the fifteenth day of March next thereafter, save only as follows: A sheriff or collector, the court-house of whose county is more than thirty miles from the seat of government, shall be allowed in addition one day after the said fifteenth day of December and fifteenth day of March for every thirty miles distance therefrom; a sheriff or collector who may not have qualified, or who may not have received the books of the assessor before the first day of August, shall be allowed five months from his qualification, or the delivery of said books to such sheriff or collector, to pay the same into the treasury.

Collectors' commissions.

24. Every sheriff or collector shall be allowed a commission of five per centum on the amount of taxes with which he is chargeable; and if he shall punctually pay the same into the treasury, within the time required by law, he shall be allowed an additional compensation of two and a half per centum. Any sheriff who may have paid into the treasury taxes for any tax payer shall have the same remedy for the collection of the same as if they had not been so paid.

Collectors' remedy for taxes advanced.

Proceedings against collectors who fail to pay.

25. In case of a failure so to pay, the auditor shall immediately publish notice of such failure in some newspaper at the seat of government, setting forth that on a certain day, within three months after such failure, he will file in the office of the circuit court of the county wherein is the seat of government, with the clerk thereof, an accurate account with which any such sheriff or collector may be chargeable on account of such taxes; and thereupon such clerk shall enter up a judgment against such sheriff or collector for the amount wherewith he is so chargeable, with lawful interest thereon from the time of such failure until payment thereof and fifteen per centum damages in addition thereto, unless the auditor shall recommend a reduction thereof; which judgment shall have the same validity, and be subject in all respects to the like proceedings thereupon as if it had been rendered by the court. But any person aggrieved by such judgment may apply to the circuit court at the seat of government, within six months after it is so entered up, to set aside said judgment and try said cause. The court, for good cause, may set aside such judgment and proceed to try the case upon its merits, and affirm the same or render such judgment as it may consider proper. In any case of failure to pay, proceedings may be had according to the forty-second chapter of the Code of Virginia, second edition, only such proceedings shall be had in the circuit court at the seat of government of the state of West Virginia, and in the name thereof. And from the time a notice shall be served, under the said chapter, on any such sheriff or collector, the property of such sheriff or collector shall be bound for the payment of any judgment which may be rendered upon such proceeding, in the same manner that the property is bound under the third section of chapter one hundred and eighty-eight of the Code, upon delivery of a *fieri facias*

Property of collector bound for judgment.

to a sheriff or other officer, and shall also operate as a lien on the real estate of such sheriff or collector from the time of the service of such notice. The right of the State to proceed by notice or otherwise against the sureties of such sheriff or collector, shall not be effected thereby.

Right of state to proceed against sureties.

Failure of collectors to pay over at regular time.

26. Every sheriff or collector of the revenue who does not pay the same into the treasury within such time as to be entitled to the additional compensation allowed for punctual payment, shall be charged with interest on the revenue so due and unpaid from the time when the same was regularly payable into the treasury. The said interest shall be at the rate of twelve per centum per annum; but if the revenue is not in arrear more than three months, the auditor shall abate six per centum of said interest. If the revenue has been in arrear three months, and not more than six months, then the auditor shall abate four per centum. If the revenue has been in arrear for six months, and not exceeding nine months, then the auditor may abate two per centum.

Appointment of collectors by auditor in certain cases.

27. The auditor may, with the approval of the executive, appoint a collector to collect arrears of taxes in any county which has no sheriff, and may allow him a reasonable compensation, to be agreed on before the service is commenced, which compensation shall not exceed twenty per centum on what may be collected and paid into the public treasury.

Time allowed to, and bond of, such collector.

28. Such collector shall have a reasonable time allowed him by the auditor, and shall, before he acts, execute a bond approved by the said auditor, conditioned that he will faithfully collect the said arrears of taxes, and account for and pay the same into the treasury within the time allowed. The said bond shall remain filed in the auditor's office.

Laws repealed.

29. All acts and parts of acts coming within the purview of this act, are hereby repealed.

Commencement.

30. This act shall not be in force until the first day of July, eighteen hundred and sixty-four, except the seventeenth section thereof, which shall be in force from the date of the passage of this act.

CHAP. 132.—An ACT to prescribe the powers, duties and compensation of Justices and Constables, in cases of misdemeanor and breaches of the peace.

Passed December 7, 1863.

Be it enacted by the Legislature of West Virginia:

Conservators of the peace.

Authority of justices as such,

And of constables.

1. Every justice and constable shall be a conservator of the peace within his county; and as such, every justice shall exercise all the powers, and discharge all the duties, which justices are authorized to exercise, and required to discharge, by chapter two hundred and one of the Code of Virginia, second edition. Every constable, as such conservator, if any person shall, within his county, and in his presence, make an affray, or threaten to beat, wound or kill another, or to

commit violence against his person or property; or contend with angry words to the disturbance of the peace; or improperly or indecently expose his person; or appear in a state of gross intoxication in a public place, may, without warrant or other process, or further proof, arrest such offending person and carry him before some justice of the township where such offence is committed; who, upon hearing the testimony of such constable and other witnesses, if any are then and there produced, if in his opinion the offence charged is proved, shall require the offender to give a bond or recognizance with security, to keep the peace, and be of good behavior for a term not exceeding one year.

Further authority of justice as conservator of the peace.

2. If any offence enumerated in the preceding section is committed in the presence of a justice within his county, or, the offender being brought before him, the commission thereof is proved to his satisfaction, he may, besides requiring a bond or recognizance, with security, as provided in the preceding section, impose upon the offender a fine not exceeding five dollars. If such bond or recognizance is not then and there given, or such fine is not then and there paid, the said justice shall commit the offender to the jail of his county, there to remain until such bond or recognizance is given, and such fine is paid; but no imprisonment under this section shall continue more than ten days, at the end of which the sheriff or jailor shall discharge the prisoner, unless he has been commanded by sufficient authority to detain him for some other cause.

Justices' jurisdiction in cases of misdemeanor.

3. Justices shall have exclusive original jurisdiction of misdemeanors and breaches of the peace occurring within their respective townships, which are punishable by a fine not exceeding ten dollars, or by imprisonment for not more than ten days; but in any case in which the law allows a fine of over ten dollars or imprisonment for more than ten days to be imposed, the justice shall not have jurisdiction.

Issue of warrant.

4. Upon the complaint on oath of any credible person, that another has committed within his county any misdemeanor or breach of the peace cognizable by a justice, the justice to whom such complaint is made, shall forthwith issue his warrant, directed to a constable of his township, or of that in which the alleged offence appears to have been committed, commanding such constable to arrest the offender and carry him before a justice of the latter township, to whom such warrant shall be made returnable; and may by endorsement on such warrant, or by subpœna, further command the constable to whom such warrant is directed, to summon such witnesses as he may designate, to appear before the justice to whom the warrant is returnable on the same or a subsequent day, if the offender shall be then arrested, and if not, then upon such arrest. On the appearance of the accused, the justice may proceed to try the case, but may grant continuances from time to time for good cause shown by the accused, or, if the justice is of opinion that the circumstances of the case require a continuance thereof, or that the ends of justice will be thereby promoted; but in no case shall any continuance be for more than twenty days. The accused shall be entitled to subpœnas for such witnesses as he may desire to have examined on his part, which shall be issued by the justice, at his request, and served by the constable to whom the same are directed.

Contents of warrant.

Continuance of trial.

Witnesses for the accused.

Trial by jury.

5. If the alleged offence is punishable by a fine exceeding five dollars, or by imprisonment, the accused, at any time before the trial is begun, may demand a trial by jury, which shall be granted him as of right. The justice shall thereupon cause a jury of six persons to be selected and impannelled for the trial of the accused, in the same manner and subject to the same regulations as are prescribed by law for selecting and impanneling juries in civil suits before justices, and any person summoned or called as a juror who shall fail to attend or refuse to serve, shall be liable to the same penalty as in a civil suit before the justice.

Penalty for refusal to serve as juror.

Duties of jury.

6. When a jury is sworn in trials before a justice for misdemeanors and breaches of the peace, they shall say by their verdict whether the accused is guilty or not guilty of the offence charged, according to the evidence produced before them, and the law of the case. If they find him guilty, they shall assess the fine to be paid, or the duration of the imprisonment, within the limits fixed by law. Where by law the punishment may be either fine or imprisonment, or both, it shall be determined by their verdict, and the justice shall render judgment in accordance therewith.

judgment of justice.

Trial by justice.

7. When any such case is tried by a justice without a jury, he shall himself hear the witnesses, and decide according to their testimony, and such facts connected with the case as may be within his own knowledge. If he finds the accused guilty he shall fix the amount of the fine and the term of imprisonment, and render judgment accordingly.

Infliction of punishments.

8. Whether the trial is by jury or not, if the judgment is against the accused, it shall also be for the whole costs of the proceeding; and if it inflicts imprisonment, the justice shall by warrant, commit the accused to the jail of his county, there to remain for the term fixed by the jury. If the judgment also imposes a fine, or if a fine is the only punishment, and the same and costs of the proceeding are not immediately paid. or bond or recognizance with security approved by the the justice given for the payment of both, at or before the expiration of thirty days from the day on which the judgment was rendered, the warrant hereby above directed, if imprisonment is required by the judgment, or a warrant issued by the justice for the purpose, shall require the accused to be detained in jail until the penalty and costs awarded by the judgment, and the jail fees, are paid; but no imprisonment for the non-payment of a penalty and the costs shall continue longer than ten days, counting where imprisonment is part of the judgment, from the expiration thereof.

Execution for costs.

9. In every case of a conviction under the provisions of this act, an execution may issue for the costs awarded by the judgment, to be levied of the goods and chattels of the offender. In every such case the justice and constable may issue their fee bills against the defendant for such costs in the case as were incurred at the request of the defendant, and are not included in the execution; and such fee bills shall have the same force as if they had been issued for fees accrued in civil cases, and be subject to the same regulations.

Payment of fines into county treasury,

10. All fines collected under proceedings authorized by this act, shall be immediately paid by the justice or constable receiving the same, to the treasurer of the county, and duplicate receipts of the said treasurer be taken therefor, one of which shall be delivered to the clerk of the board of supervisors, and the other endorsed by the said clerk, and retained by the person paying the money, as required by the tenth section of the act passed November second, eighteen hundred and sixty-three, entitled "An Act defining in part the powers and duties and regulating the proceedings of the boards of supervisors in the several counties of the State." The treasurer shall enter every sum so paid to the credit of an account to be kept in his books under the heading, "General school fund." All claims by justices and constables of the county or others, for fees due them in proceedings authorized by this act, where such fees have not been collected on executions or fee bills as aforesaid, shall be submitted by them to the board of supervisors, at or before their stated meetings on the twentieth of June and December, annually; and if the board believe that such claims are justly due, and could not have been collected by the exercise of proper diligence, they shall order the same to be paid out of the said "General school fund," if sufficient, and charged to the said account. A correct statement of the said account, verified by the affidavit of the treasurer of the county, shall be forwarded by him to the auditor, on the first days of January and July, annually, or within seven days thereafter; and the said treasurer shall then pay into the treasury of the State the net proceeds of the said fines as exhibited thereby, to be applied as provided by the second section of the tenth article of the constitution. If the treasurer of any county fail to discharge any duty required of him by this section, he shall be fined not less than ten nor more than one hundred dollars for every such offence.

To credit of 'general school fund.'

Payment of justices' and constables' fees out of same.

County treasurer's report of same to auditor,

And his payment of fine into state treasury.

Penalty for failure.

Right of appeal of party against whom judgment is rendered.

11. Every person against whom judgment is rendered by a justice in a case of misdemeanor or breach of the peace, by which imprisonment is awarded, shall be allowed by such justice an appeal, as of right, to the circuit court of the county, upon giving bond or recognizance, with security approved by the justice, to appear before such court on the first day of the next term thereof and to satisfy such judgment as the said court may award against him. If such person, previous to the trial, has been in custody for want of bail which he is still unable to give, an appeal as aforesaid shall be allowed him without such bond or recognizance, but he shall continue in custody until the same is given.

Transfer of papers by justice in case of appeal.

12. When an appeal is allowed under the preceding section, the justice shall prepare and certify a transcript of his docket, and transmit the same, together with all the papers in the case, to the clerk of the circuit court of his county, who shall docket the case in his court, and the proceedings thereafter shall be the same, as near as may be, as if the accused had been presented or indicted by a grand jury; but the said court shall proceed to try the case upon its merits, without indictment or presentment, and shall admit all legal evidence offered on either side, whether the same was, or was not, offered before the justice, and give such judgment as the law and the evidence may re-

Proceedings of court.

quire. If the accused is found guilty, the judgment shall include the costs properly awarded against him by the justice, as well as those incurred in the said court. All subsequent proceedings shall be under, and according to, the judgment of the said court, and not that of the justice.

Style of proceedings before justices.

13. All criminal proceedings before, or by authority of a justice, shall be in the name of the state of West Virginia; but no costs or fees shall in any such case be charged or taxed against the State or any county thereof. Where, however, a county or township sues for a penalty imposed by itself, or by this act, it shall be liable for costs, as any private person is liable.

Justices' fees in criminal cases.

14. Every justice shall be entitled to the following fees in criminal cases and proceedings, to be recovered of the defendant if convicted, or to be paid by him if the services were rendered at his instance:

For every recognizance or bond to keep the peace, or be of good behavior, twenty-five cents.

For every warrant of arrest or commitment, twenty cents.

For docketing case on return of warrant of arrest executed, ten cents.

For all services rendered at the instance of the defendant, the same fees shall be charged as are allowed for similar services in civil causes.

For trial before a jury, fifty cents.

For trial without a jury, twenty-five cents.

For every subpœna for one or more witnesses, twenty cents.

For every warrant to summon a jury, twenty-five cents.

For swearing a jury, ten cents.

For swearing witnesses, five cents each.

For entering his judgment on his docket, and taxing the costs, twenty-five cents.

For issuing execution, twenty cents.

For granting an appeal, including taking the bond or recognizance, making and certifying a transcript of his docket, and transmitting the same, and the papers of the case to the clerk of the circuit court, ten cents for every hundred words.

For a second or subsequent warrant or execution, one-half of the fee allowed for the first.

In all other cases, the fees allowed in civil cases or by law to other county officers for similar services.

Constables' fees.

15. Constables shall be entitled to the fees heretofore prescribed by law.

CHAP. 133.—An ACT to regulate the fees of Justices and Constables.

Passed December 8, 1863.

Be it enacted by the Legislature of West Virginia:

Fees of justice.

1. Every justice, for services performed by him by virtue of his office, may charge the following fees to the person at whose instance or request the services are done:

For summons to commence a civil action, twenty cents;
For every additional summons in same action, fifteen cents;
For docketing an action commenced by appearance and agreement, twenty cents;
For every order of arrest, order of commitment or order of attachment, twenty-five cents;
For every subpœna for witness, ten cents;
For order of arrest against delinquent witnesses or jurors or in any case of contempt, and for trial and judgment in such case, seventy-five cents;
For swearing each witness, arbitrator or party, five cents;
For taking and certifying any affidavit in writing, twenty cents, or ten cents per hundred words, at the option of the justice;
For every continuance, ten cents;
For appointing a guardian for the suit for an infant plaintiff or defendant, ten cents;
For appointing special constable at request of either party, twenty-five cents;
For settling and allowing interrogatories, twenty-five cents;
For entering agreement for arbitration, ten cents;
For summons to arbitrators, fifteen cents;
For every undertaking filed in the suit, twenty-five cents;
For *venire* for jury, including the drawing of same, twenty-five cents;
For trying a jury case, seventy-five cents;
For trying a case without a jury, where defendant appears and defends the action, fifty cents;
For entering judgment, twenty-five cents;
For abstract of judgment for docketing in recorder's office, fifteen cents;
For transferring a judgment on docket, twenty-five cents;
For entering satisfaction of judgment, ten cents;
For issuing execution, twenty-five cents;
For issuing every additional execution, twenty cents;
For entering stay of execution, twenty cents;
For trying right of property levied on or attached, fifty cents;
For taxing costs, twenty cents;
For filing the papers in each suit, ten cents;
For every process or order not otherwise provided for, twenty-five cents;
For transcript from docket, and for other writings and copies not otherwise provided for, twenty-five cents, or ten cents per hundred words, at the option of the justice;
For transmitting or delivering papers to clerk of the circuit court in case of an appeal, twenty-five cents;
For taking and certifying acknowledgment of deed or other instrument of writing, twenty-five cents;
If executed by a married woman, ten cents in addition for certifying her examination and acknowledgment;
For taking depositions of witnesses, if done in an hour or less, seventy-five cents;

If not done in an hour, for any additional time, at the rate per hour of, seventy-five cents;

For certifying proof of account or claim against the estate of a testator or intestate, fifteen cents.

Fees of constable

2. Every constable, for services performed by him by virtue of his office, may charge the following fees to the person at whose instance or request the services are done:

For service and return of summons to commence a suit, or every additional summons, thirty cents;

For serving and returning order of arrest, sixty cents;

For serving and returning order of attachment, twenty cents for each garnishee notified, and one dollar for taking property, including inventory and appraisement, besides the reasonable expenses of removing, securing and keeping the property attached;

For subpœna, for each person served therewith, twenty-cents;

For summoning a jury and return of *venire*, fifty cents;

For levying an execution on personal property and return, thirty cents;

For posting notices of sale, twenty-five cents;

For money made under execution or attachment and paid to the justice, five per cent on the first fifty dollars, and three per cent on the residue;—

For serving and returning other writs and notices not specified in this section, each, twenty-five cents;

For copy of any writ, notice, order or paper, ten cents per hundred words, and ten cents for any number of words less than one hundred;

For services not otherwise provided for, the same fees as sheriffs.

Fees of justice in criminal cases.

3. For services in criminal cases not otherwise provided for, the justice may charge to the county the following fees, to be audited and paid by the board of supervisors as other claims against the county:

For the warrant to arrest the person or persons accused, and take him before a justice for examination, including the summoning of witnesses, twenty-five cents;

For the examination of witnesses to ascertain whether such warrant ought to be issued, and against whom, fifty cents;

For the examination when the accused is apprehended and brought before him, fifty cents;

For recognizance of bail, warrant of commitment or discharge of the accused, twenty-five cents;

For recognizance of witnesses, each, ten cents;

For a search warrant, fifty cents.

Manner of collecting fees allowed by this act.

4. The justice and constable may issue their fee bills against the person at whose instance or request the services were rendered, for any fees lawfully chargeable for such services that have not been collected on execution or otherwise paid, except the fees chargeable to the county as aforesaid. Such fee bills shall have the force of an execution, and may be collected by the sheriff or collector of taxes of the

county, or the constable of the township in which the persons against whom they are issued respectively reside. The person collecting the same may retain, for his compensation, ten per cent. on the amount duly accounted for and paid over to the officer entitled to receive the same. The twenty-fourth, twenty-fifth and twenty-sixth sections of chapter one hundred and eighty-four of the Code of Virginia, second edition, so far as the same are consistent with this act and other laws of the state, shall be held applicable to such fee bills.

Penalty for issuing false fee bill.

5. If any justice or constable issue a fee bill for any service not performed, or against any person not chargeable therewith, or for a greater amount than the law allows, he shall pay to the person against whom the same is issued, four times the amount so unlawfully charged; which may be recovered by such person before any court or any justice not interested, having jurisdiction.

Fees required in advance.

6. For any service to be rendered by virtue of his office, for which a fee is allowed by law, except fees chargeable to the State or a county, the justice or constable may require the proper fee to be paid before the service is rendered.

Justice's fee book.

7. The justice shall keep a fee book, or a memorandum or account upon his docket, so as to show underneath the title of each suit the costs made by each party, separately, for services rendered at the instance or request of such party; and also, to whom the same are due, whether to himself, the constable, witnesses or other persons; and shall note from time to time which of the items are paid so far as the fact may come to his knowledge.

Definition of "costs."

8. The costs to be included in the judgment or execution are those only made by the party in whose favor the judgment is rendered, and which have been paid by him, or which he is bound to pay if the same are not collected from the adverse party. But the costs made by the party against whom the judgment is rendered and which he is bound to pay, may be separately endorsed or noted on the execution, which shall then, so far as such costs are concerned, be equivalent to a fee bill. When costs are included in an execution, or endorsed or noted thereon, it shall show the sum due each person, whether justice, constable, witness or other person.

CHAP. 134.—An ACT providing for issuing Grants for Land in certain cases.

Passed December 9, 1863.

Be it enacted by the Legislature of West Virginia:

Survey of entries made prior to June 20, 1863.

1. All entries made before the twentieth day of June, eighteen hundred and sixty-three, under the provisions of chapter one hundred and twelve of the Code of Virginia, second edition, which were in force on that day, and which have not heretofore been surveyed, shall be surveyed according to the provisions of the said chapter of the said Code. All plats and certificates of such surveys, whether heretofore or hereafter made; plats and certificates of all other surveys in

Return of plats and certificates of survey to sec'y of the state.

force on the said twentieth day of June, eighteen hundred and sixty-three, and copies of all plats and certificates of surveys heretofore filed in the land office at Richmond, on which no grants have issued and been delivered to the parties to whom issued, shall, before the expiration of three years from the passage of this act, be returned by those for whom the surveys are made, to the secretary of the state, and they may demand of him receipts for the same. And no grant shall issue for any land until the conditions imposed by section forty-three of the said chapter of the said Code be complied with by the person applying for the grant.

Entry of caveats.

2. Caveats may be entered in the office of the secretary of the state for the same causes that they might have been entered in the land office, under the provisions of chapter one hundred and twelve of the said Code of Virginia; and the secretary shall furnish to the person entering any caveat, a certified copy thereof, and if he desire it, a certified copy of the certificate and plat of survey; and such caveat, and all other caveats now pending in any court of this State, shall be proceeded with in the manner provided in the said chapter; and for that purpose the words "land office," and "register of the land office," and "register," wherever they occur in said chapter, shall be read, "office of the secretary of the state," and "secretary of the state," when necessary to give effect to this act.

How proceeded with.

Filing copy of caveat pending in court to stay the issue of a grant.

3. In all cases of caveat now pending in the courts of this State, any person interested may file in the office of the secretary of the state, a copy of such caveat, together with a copy of the plat and certificate of the survey on which the same is founded, and this shall prevent the issuing of a grant on such plat and certificate of survey, until such caveat is tried according to this act and said chapter one hundred and twelve of the said Code.

Time for issuing grant.

4. Within not less than six nor more than nine months after the right to a grant is complete, in the manner herein and in the aforesaid chapter of the Code of Virginia prescribed, the secretary of the state shall cause to be made out to the party having the right, a grant for the land described in such surveys, or copies of surveys to the following effect:

Form of grant.

"A. B., governor of the state of West Virginia, to all to whom these presents shall come, greeting: Know ye that in consideration of——, heretofore paid by——, into the treasury of the commonwealth of Virginia, there is granted by the state of West Virginia, unto the said——, a certain tract or parcel of land containing —— acres, lying in the county of——, &c., (describing the bounds of the land and date of the survey,) with its appurtenances, to the said—— and his heirs forever. *In witness whereof*, The said A. B., governor as aforesaid, has set his hand, and caused the seal of the said state to be affixed hereunto, at——, on the——day of——, in the year——, and of the State the——.

A. B."

Regulations for the completion and delivery of grant.

5. The secretary shall deliver such grant to the governor, by whom it shall be signed and sealed with the seal of the State, and returned to the secretary, who shall record and index the said grant, and the plat and certificate of survey on which it is founded, in well bound

books provided for the purpose at the public charge. The secretary shall certify the grant to have been recorded, and then deliver it to the party to whom it is made, or his order, or to the bearer of the receipt given by him for the survey on which such grant is founded.

Fees of secretary

6. For all services rendered under this act by the secretary, he shall be entitled to the same fees that the register of the land office of the state of Virginia would be entitled to for like services, to be charged, collected and accounted for in like manner; but in all cases in which plats and certificates of surveys have been returned to the land office at Richmond and all the fees there paid, the secretary shall not charge or receive any further fees.

Laws repealed.

7. The fifty-second and fifty-third sections of chapter one hundred and twelve of the said Code of Virginia, are hereby repealed.

CHAP. 135.—An ACT providing for the Appraisement of certain property.

Passed December 9, 1863.

Be it enacted by the Legislature of West Virginia:

Appointment of appraisers,

1. Before any sale of property stayed by the provisions of the act passed January thirtieth, eighteen hundred and sixty-three, by the general assembly of Virginia, entitled "An Act staying the collection of certain debts," shall be made, it shall be the duty of the officer or person authorized to make such sale, to appoint three discreet and reputable freeholders, to affix a valuation on such property, in manner and form following, that is to say: the said appraisers shall take and subscribe an oath before some person legally authorized to administer the same, to the effect that they will truly, justly, and impartially examine, estimate, and appraise the fair cash value of all such property as is exhibited to them for that purpose, and liable to sale. The said appraisers shall thereupon proceed to assess the value of each piece or parcel of said property as aforesaid, and make return of said valuation and appraisement, one copy to the officer and another copy to the recorder's office; to which they shall append their certificate that they have, after being duly sworn, fairly and impartially, to the best of their judgment, valued and appraised the property therein set forth; and shall each sign his name thereto with the proper date and place.

Who are to take an oath,

To value property under execution.

Certified return of appraisement.

Exposure of property to sale.

2. The officer or person legally authorized to sell as set forth in the preceding section, may thereupon, having given such notice of time and place as the law, decree or order, deed of trust or mortgage may prescribe, proceed to expose to sale to the highest bidder, the property so valued and appraised; and if bidders are found to purchase such property at seventy-five per centum of the valuation and appraisement, then the sale shall be valid, and the property shall pass to the bidder or purchaser; but if the bids shall not be seventy-five per centum of the valuation and appraisement, then the sale shall not be valid, and the officer or person authorized to sell shall withdraw said property from sale for the time, but may from time to time at in-

Per cent. of value property must bring to make valid sale.

Exposure of same to sale from time to time.

tervals of not less than ninety days, expose the same until purchasers may be found willing to bid the seventy-five per centum of the valuation and appraisement.

Condition imposed on defendant

3. No defendant shall be entitled to the benefits of the provisions of this act, who shall not before the day of such sale take and file in the office of the recorder of his county the oath prescribed in the act passed on the sixteenth day of November, eighteen hundred and sixty-three, amending and re-enacting the first section of the act passed on the twenty-sixth day of June, eighteen hundred and sixty-three, entitled "An Act concerning oaths and affirmations."

Chap. 136.—An ACT concerning Slaves.

Passed December 9, 1863.

Be it enacted by the Legislature of West Virginia:

Slaves forbidden admission into the state for permanent residence.

1. No person held to service or labor as a slave under the laws of any other state, territory or country, or who has been sent or taken out of this State with the consent of the owner, and was out of the State on the twentieth of June, eighteen hundred and sixty-three, shall be permitted to come or be brought into this State for permanent residence.

In what case and time slaves so coming in are to be free.

Any such person or slave coming or brought into this State by or with the consent of his master or owner, or of any person legally representing or acting for or on behalf of such master or owner, and remaining therein with the consent of such master, owner or person for six months, shall be thereafter free.

Proviso as to loyal owners.

Nothing in this section shall be construed to prevent loyal citizens from bringing into the state their slaves who may have fled from service, or who may have been removed by their owners to other loyal states holding slaves.

Removal of slaves from the state forbidden.

2. It shall not be lawful to remove from this State any person held to service or labor as a slave, with the intent to deprive such person, or the children thereafter born of such person, of the right to freedom under the seventh section of the eleventh article of the constitution of this State.

Punishment therefor.

Any person who shall so remove any slave from this State, or aid or abet another in so doing, shall be punished by confinement in the penitentiary not less than one or more than three years. If such removal be made by or at the instance or with the connivance of the owner, such slave shall thereafter be free.

Emancipation of slaves.

3. Any person may emancipate his slaves by deed or will. Slaves so emancipated shall not be liable, in any way, for any claim or taxes, whether contracted or due before or after the passage of this act, saving only for such actual liens as exist at the time of the passage of this fact.

Care of infirm slaves emancipated.

4. If any slave emancipated by deed or will, be at the time he is emancipated unable to maintain himself on account of physical weakness or disability, or mental incapacity, the overseer of the poor for the proper township shall provide for his maintenance and charge the necessary expenses thereof, quarterly or annually, to the person who emancipated him or his estate, and may recover the same, from time to time, before any court or justice having jurisdiction.

5. The persons entitled to the services and labor of slaves emancipated by the constitution, on their attaining the ages of twenty-one and twenty-five years, may transfer their right; but such transfer shall be by deed or bill of sale duly recorded in the county of the purchaser; in which shall be set forth the time of the birth of such slave, as nearly as it can be ascertained, and the time when, under the provisions of the seventh section of the eleventh article of the constitution, he will be free. If the person transferring his right to such services, shall knowingly and wilfully insert, or permit to be inserted, in such deed or bill of sale, as the time when such slave will be free, a time later than the true time, he shall be liable to a fine of two hundred and fifty dollars.

Transfer of claim to the labor of slaves emancipated by the constitution.

Punishment for falsely stating age of such slave.

6. It shall be the duty of the assessors of the several counties of the state annually to list all children born of slave mothers within their respective districts after the fourth day of July, eighteen hundred and sixty-three, in such manner as to show the names and time of birth of such children, the names of the mothers and their respective owners, and the townships in which the latter respectively reside, and also to list all slaves who, at the time aforesaid, were under the age of ten years, and in a separate list those who were at that time over ten and under twenty-one years of age, showing, in each case, the names of such slaves, and the respective times of their birth as nearly as can be ascertained, and the names and townships of their respective owners. If the services and labor of any such slave have been transferred, or he has been emancipated, or has removed from the county, or has died since the previous list was prepared, the fact shall be noted on the proper list. These lists shall be filed and preserved in the office of the recorder for public inspection. Any person who shall knowingly and wilfully give to the assessor false information as to the time of birth of any such slave, shall be liable to a penalty of one hundred dollars. For every person properly listed by them under the provisions of this section, the assessors shall receive three cents, to be paid out of the county treasury.

Listing children born of slave mothers after July 4th, 1863,

And of slaves at that time under the age of 10, and over 10 and under 21, respectively.

Disposition made of lists.

Penalty for false statement as to birth of slave.

Assessor's fee.

7. Chapter one hundred and three of the Code of Virginia, second edition, except sections nine, eleven and twelve, is hereby repealed.

Laws repealed.

CHAP. 137.—An ACT providing for the establishment of a system of Free Schools.

Passed December 10, 1863.

Be it enacted by the Legislature of West Virginia:

1. In conformity with the provisions of the tenth article of the constitution, a system of free schools is hereby established, according to the provisions of this act, in order to provide the means of instruction for all the youth of the state, in such fundamental branches of learning as are indispensable to the proper discharge of their social and civil duties; and for this purpose each and every organized township within the several counties of this State, or which may hereafter be organized within the same, is hereby constituted a school district, to be confided

Establishment of free schools.

City of Wheeling

to the care and management of a board of education as hereinafter constituted; but the city of Wheeling, with parts of townships connected therewith, shall constitute but one school district.

Election of school commissioners.

Their term.

2. At the time and place of holding elections for township officers, as provided in the act entitled "An Act to regulate elections by the people," and in conformity with the provisions of the same, the qualified voters of the several townships shall, in addition to the officers therein specified, elect three school commissioners, of whom the one having the highest number of votes shall hold his office for the term of three years; the one having the next highest number of votes shall hold his office for the term of two years, and the one having the next highest number of votes shall hold his office for the term of one year; and annually thereafter at the time and place of holdiug township meetings and elections, and in conformity with the act regulating the same, one commissioner shall be elected who shall hold his office for the term of three years: provided, that if at the first election any two or more of the school commissioners elected shall have an equal number of votes, the persons so elected shall determine, by lot, the duration of their respective terms of office; and provided further, that no person shall be deemed ineligible to the office of school commissioner in consequence of having held the office the preceding term; and that after the first election two commissioners shall not be chosen from the same sub-division, if there be so many as three sub-divisions in the township.

Proviso as to ties,

And as to eligibility.

Qualification of commissioners.

3. The commissioners so elected shall, within ten days after being duly notified by the township clerk of their election, proceed to qualify, by taking the several oaths prescribed by law; which oaths the clerk of the township is hereby authorized to administer to the commissioners aforesaid; a copy of which oaths, signed by the commissioners aforesaid, shall be kept by him upon the files of his office. And if any vacancy should occur in the office of school commissioner by death, resignation, refusal to serve, or otherwise, the board of education of the township shall fill such vacancy within ten days after being informed thereof, by the appointment of some suitable person, who shall hold his office until the next annual township election, when a commissioner shall be elected for the unexpired term.

Vacancies.

Township board of education—how constituted—authority of.

4. The commissioners so elected and qualified, together with the clerk of the township, shall constitute the board of education of their proper township, and they and their successors in office shall be a body corporate in law, under the name and style of "The Board of Education of the township of ——," and as such may purchase, hold and sell or convey real and personal property for the uses of education within their district, may receive any gift, grant, donation or devise; may become a party to suits and contracts; and do other corporate acts. They shall have the care, custody and management of, and be invested with the title to, all real and personal property for the use of the public schools within their district, and may manage or dispose of the same, as in their opinion will best subserve the interests of education and the benefit of the schools.

5. The clerk of the township shall be the secretary of the board of education, but shall have no vote, except in the case of an appointment to fill a vacancy in the office of school commissioner. He shall be present at all meetings of the board, and shall record in a book to be provided for the purpose, all their official acts and proceedings, which shall be a public record, open to the inspection of all persons interested therein; all which proceedings, when so recorded, shall be attested by his signature thereto as secretary of the board. He shall have the care of, and shall preserve in his office, all papers containing evidence of title, contracts and obligations; and in general shall record or keep on file in his office all such papers and documents as may be so required by any of the provisions of this act, or by the orders of the board of education. For his services he shall receive such compensation as the board of education may determine. In his absence the board may appoint a clerk *pro tempore*.

Duties of secretary thereof.

His compensation.

6. The board of education of each school district shall, so soon as practicable after they are duly elected and qualified, and annually thereafter, within ten days after the fourth day of July, take, or cause to be taken, an enumeration of all the youth, resident within their school district, between the ages of six and twenty-one years, distinguishing between males and females, and shall cause the result of such enumeration, verified by the oath or affidavit of the person taking the same, to the effect that such enumeration is correct, and that he has used all means within his power to have it so, to be recorded in the office of their secretary; which enumeration shall be transmitted by the said secretary to the county superintendent. They shall divide their district into convenient sub-divisions, assigning to each not less than fifty youths, between the ages of six and twenty-one years, except in cases where, in the opinion of the board, it is necessary to reduce the number; and shall cause to be taught in each, at the expense of the district, one school for not less than six months in the year, in which shall be taught, by competent teachers, orthography, reading, writing, arithmetic, English grammar and geography, with such other branches as the board may decide or the circumstances of the school may require. In making these sub-divisions due regard shall be had to any school house already erected, or school house site alread procured, so far as may be and as shall best subserve the interests of free schools.

Enumeration of youth.

Sub-division of districts.

District schools, and branches taught therein.

District school houses.

7. The board of education shall take the control and management of all the schools within their district, in pursuance of which they shall be charged with the following powers and duties.: *First*, They shall establish a sufficient number of free schools for the education and instruction of every individual resident within their district, between the ages of six and twenty-one years, who may apply for admission and instruction, either in person or by parent, guardian or next friend. *Second*, They shall cause suitable lots of ground to be procured and suitable buildings to be erected, purchased or rented, for school houses, and shall supply them with the proper fuel, and with such furniture and fixtures as are necessary to the comfort, health, good order and progress of the pupils. *Third*, They shall have the appointment

Management of district schools

Establishment of schools.

School houses.

Teachers and their salaries.

of all the teachers of the public schools within their district, shall fix the amount of teachers' salaries, and may dismiss them at any time for incompetency, cruelty, negligence or immorality. *Fourth*, They shall direct what branches of learning, in addition to those prescribed in the sixth section of this act, shall be taught in each school, and what class books shall be used within their district, and may suspend or expel from any school any pupil found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct. *Fifth*, They shall visit all the schools of their district once within two weeks after the opening, and again within two weeks preceding the close of each school, and at such other periods during the term as in their opinion the exigencies of each school may require; at which visits they shall examine the register of the teacher and see that it is properly kept, and other matters touching the school house, furniture, fixtures, library; studies, discipline, mode of teaching and improvement of the school; shall confer with the teacher in regard to its condition and management, and make such suggestions as in their view would promote the interest and efficiency of the school, and the progress and good order of the pupils. The results of such visitation they shall cause to be entered on their minutes. *Sixth*, They shall pay all necessary expenses of the schools by drafts upon the township treasurer or other proper disbursing officer, of the funds raised within each district for school purposes, which drafts shall be signed by the clerk of the township as secretary of the board, and an account of the same shall be entered by him in a book to be kept for the purpose. *Seventh*, They shall annually, on or before the first day of June in each year, make a report to the county superintendent, setting forth the number of schools within their districts; the number and condition of their school houses; the number of scholars in attendance during the year, distinguishing between males and females; the average of daily attendance; the length of time the schools have been kept open during the year; the amount of tax levied and collected for school purposes within their district during the year; the number of teachers employed, distinguishing between male and female; the averages of each per month, including board; the amount expended for building, repairing and furnishing school houses; the amount and value of apparatus and libraries belonging to their district for the use of the schools; and such other information as may be necessary and benificial, in order to form a just estimate of the operation of the school system. *Eighth*, It shall be the duty of the board of education to make settlement with the township treasurer at their regular session in April, annually; but if from want of time or other reason a settlement cannot be made in that month, then it shall be the duty of the board to appoint a committee composed of one or more of their members to make such settlement as soon as practicable; and the result shall be reported to the clerk, and an abstract recorded in the records of the board.

Branches taught; books used; expulsion of pupils.

Visits of board to schools.

Payment of expenses of schools

Annual report by board to county superintendent.

Settlements with township treasurer.

8. Whenever it shall happen that persons are so situated as to be better accommidated at the school of an adjoining township, whether in the same or an adjoining county, or whenever it may be desirable

Transfer of pupils from one district to another.

to establish a school composed of parts of two or more townships, it shall be the duty of the respective boards of the townships in which such persons reside, or in which such schools may be situated, or of the townships or parts of which the school is to be composed, to transfer such persons for school purposes to the township in which such school house is or may be located; but the enumeration of scholars shall be taken in each township as if no such transfer had been made; and such school, when so composed, shall be supported from the funds of the respective townships from which the scholars may have been transferred; and the board of that township in which the school house is situated, shall have the control and management of such school; and the boards of the adjoining township or townships so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the county superintendent as part of their annual estimates for school purposes, and draw orders on their respective township treasurers for such sum as will be in proportion to the enumeration of scholars so transferred in favor of that township in which such school is located, to be appropriated to the payment of teachers and for other purposes connected with the establishment or maintenance of such school.

Collection of accounts against township boards of education.

9. When any judgment shall be obtained against any township board of education, it shall be the duty of the county superintendent to assess the amount of such judgment with interest and costs upon the taxable property of their township; which account shall be collected and paid out, in the same manner as other school taxes, upon the order of the clerk of said board upon the township treasury, to satisfy the judgment aforesaid.

High schools—how established;

10. Whenever, in the opinion of the board, the interests of education within their district require that a central or union school of higher grade be established, the said board shall call a township meeting, by giving at least ten days notice, by written or printed advertisements, posted in at least five of the most public places within their district, specifying the time, place and object of the meeting, which meeting, when convened, shall be organized and conducted, as provived for the annual township meetings; and when so organized, the board of education shall submit the proposition for the establishment of such school, with the reasons for the same, together with a carefully prepared estimate of the cost; and if, after full deliberation and discussion, two-thirds of the qualified voters present and voting, shall decide in favor of the proposition, such school shall be established, and the estimated additional cost shall be added to the next annual assessment for school purposes within the district; and the board of education shall proceed to put such school into operation.

For whose benefit; and how kept

11. Such school, when established, shall be for the benefit of all the inhabitants of the district, and shall be kept by a competent teacher or teachers, of good moral character, who, in addition to the branches of learning prescribed for the primary schools, shall be capable of

giving instruction in book-keeping, algebra, geometry and surveying, with such other branches pertaining to the natural sciences and general literature, as the board of education may determine.

Functions of boards of education respecting high schools.

12. In regard to such union schools, the several boards of education shall be invested with the same powers, and perform the same duties, as in reference to the primary schools, so far as these are applicable. They shall determine the ages and qualifications of the scholars to be admitted into them, and the length of time they are to be kept in operation during the year, and shall report separately to the county superintendent all such facts in regard thereto, as will be necessary to form a just estimate of the state of education within their district.

Condition precedent to distribution of state school fund.

13. No school district shall receive its share of the State fund for the support of free schools, unless the report required to be made by the board of education thereof shall first have been filed in the office of the county superintendent, within the time prescribed by law.

Qualifications of teachers.

14. No teacher shall be employed to teach in any of the public schools of this State, until he shall have presented to the board of education of the district in which he applies a certificate, in duplicate, of his qualification to teach a school of the grade for which he applies; the duplicate copy of which shall be filed with the clerk of the township, and no salary shall be paid to any teacher unless such duplicate be filed as aforesaid.

School registers.

15. It shall be the duty of every teacher to keep a daily register of his school, in manner and form as prescribed by the state superintendent, blank forms of which register shall be furnished to every teacher by the board of education of the district at the commencement of his term, and at the close thereof shall be deposited in the office of the township clerk, properly filled according to the instructions accompanying the same from the state superintendent, as a condition precedent to his receiving his salary.

General duty of teachers.

16. It shall be the duty of all teachers employed in any of the public schools of this State to inculcate the duties of piety, morality and respect for the laws and government of their country; and all teachers, boards of education, and all other school officers created by this act, are hereby charged with the duty of providing that moral training for the youth of this State, which shall contribute to securing good behavior and virtuous conduct, and to furnishing the State with exemplary citizens.

Schools for colored children.

17. The township boards of education in their respective townships shall be, and they are hereby, authorized and required to establish within their respective jurisdictions, one or more separate schools for free colored children, when the whole number by enumeration exceeds thirty, so as to afford them as far as practicable, under all the circumstances, the advantages and privileges of a free school education; and all such schools so established shall be under the management and control of the board of education; but in case the average attendance of free colored children shall be less than fifteen for any one month, it shall be the duty of said board or other school officers

to discontinue said school or schools for any period not exceeding six months at any one time, and if the number of free colored children shall be less than fifteen in attendance, or not exceeding thirty by enumeration, the directors shall reserve the money raised on the number of free colored children, and the money so reserved shall be appropriated for the education of such colored children in such a way as the township board shall think best.

18. On the same day of the election of township officers, next ensuing, and every two years thereafter, on the day of said election, the voters of each county shall elect a county superintendent of free schools, whose term of office shall be for two years, to commence on the tenth day succeeding said election; and he shall continue in office until his successor is elected and qualified. He shall, before entering upon the duties of his office, execute a bond before the recorder of his county, in the sum of five hundred dollars, with approved security; upon which bond he shall be liable in any court having jurisdiction, to any person or persons, or to any township board of education, for losses sustained by reason of his neglect or non-performance of duties imposed by this act. Said bond shall be filed in the office of the recorder; who shall, within five days, certify to the general superintendent of free schools, the name of said county superintendent and his post office address.

County superintendent.

His bond.

19. The county superintendent shall be liable to removal by the board of supervisors, for any palpable violation of law or omission of duty. But no such superintendent shall be removed for such violation of law or omission of duty, unless charges thereof shall be preferred to the board of supervisors, and a notice of the hearing, with a copy of the charges delivered to such superintendent, and an opportunity given him to be heard in hisdefence. And when the office of county superintendent shall become vacant from any cause, the said board of supervisors shall fill the same, by appointment, for the unexpired term; and the person so appointed, shall give the requisite bond and hold his office until his successor shall be qualified.

His liability to removal.

Vacancies.

20. The county superintendent shall examine all candidates for the profession of teacher, as to their competency and capacity to teach orthography, reading, writing, arithmetic, English grammar and geography, if the application is for a primary school; and if the application is for a union or central school, he shall examine the applicant as to his competency and capacity to teach the additional branches required for such school; and if satisfied of the competency and capacity of the applicant to teach and govern such school, and that he or she is of good moral character, he shall give a certificate, in duplicate, accordingly. The county superintendent shall keep a register of all those to whom certificates have been awarded, stating the character and grade of certificate, and the time when issued. No certificate issued by a county superintendent, shall be of force, except in the county in which it was issued, nor for a longer period than one year; and the county superintendent may revoke the certificate of any teacher within the county, for any cause which would have justified

Duties of county superintendent.

the withholding thereof, when the same was granted, by giving ten days notice to the teacher and the board of education by whom he is employed, of his intention to revoke such certificate.

Duties of county superintendent.

21. It shall be the duty of the county superintendent to visit all the schools within his county, at least three times during every term of six months, and to note the course and method of instruction, and the branches taught, and to give such directions in the art of teaching and the method thereof, in each school, as to him shall seem necessary and expedient, so that uniformity in the course of studies, and methods of instruction employed, shall be secured as far as practicable in the schools of the several grades respectively. He shall acquaint himself, so far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school, the classification of its pupils, or the method of instruction employed in the several branches, and shall make such suggestions, in private, to the teachers, as to him shall appear to be necessary to the good order of the school and progress of the pupils. He shall note the character and condition of the school houses, the sufficiency or insufficiency of their furniture and fixtures; and shall make such suggestions to the several township boards of education as in his opinion shall seem conducive to the comfort and progress of the pupils of the several schools.

Duties of county superintendent.

22. It shall be the duty of the county superintendent to aid the teachers in all proper efforts to improve themselves in their profession. For this purpose he shall encourage the formation of county associations of teachers for mutual improvement; shall attend the meetings of such associations whenever practicable, and give such advice and instruction in regard to their conduct and management, as in his judgment, will contribute to their greater efficiency. In connection with the superintendents of adjoining counties, each county superintendent shall encourage the formation of teachers' institutes; shall attend and participate in the exercises of the same, so far as practicable; and shall use all proper means to improve the efficiency of the teachers, and to elevate their profession. He shall use all proper means to create and foster among the people an interest in free schools, and for this purpose, shall, as far as practicable, take advantage of such public occasions as may present themselves, as the dedication of school houses, public examinations, &c., to impress upon the people the importance of public education, and the duty of sustaining the system of free schools as established by law. He shall at all times, conform to the instructions of the state superintendent, as to all matters within the jurisdiction of the said superintendent, and shall serve as the organ of communication between him and the several township boards of education. He shall distribute from his office, all blanks, circulars, copies of school laws, and other communications from the state superintendents, to the several boards and persons entitled to receive the same.

Duties of county superintendent.

23. It shall be the duty of the county superintendent to secure, as far as practicable, uniformity in the text books used in the schools

throughout his county; but no county superintendent shall act as agent for any author, publisher or book-seller; nor shall directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book or school apparatus or furniture of any kind whatever. Any act herein prohibited, shall be deemed a violation of his official oath; and any offer or solicitation to such an act, shall be considered an attempt to bribe and corrupt a public officer.

Duties of county superintendent.

24. It shall be the duty of the several county superintendents to receive and revise the reports from the several township boards, and to see that they are in proper form and according to the intent and spirit of the law, and where deficiencies exist to return them for correction. It shall be their duty to make out from these reports and from their own information, a report for each county in tabular form to the state superintendent, setting forth, under appropriate heads, the following items, viz: The number of schools in each district; the average number of months the schools have been taught during the year; the number of male teachers; the number of female teachers; the average salary per month of male teachers; the average salary per month of female teachers; whole number of youth within each district between the ages of six and twenty-one years; the number entered in the schools of the district; the average daily attendance; amount levied within each district for the support of schools; amount levied for building purposes; amount received from state appropriation; cost of construction; fuel and contingencies; and amount expended for purchasing, renting, repairing and furnishing school houses. In addition to this report, it shall be the duty of the county superintendent to make out and transmit to the state superintendent a detailed report of the condition and character of the schools within his county, noting all deficiencies and suggesting their remedies, with such remarks upon the operation of the school laws as his experience and observation may have suggested, pointing out wherein he regards them as deficient, and what amendments may be required to render them efficient. He shall also report such townships in which the boards of education have failed to make return of the enumeration of youth as required in the sixth section of this act.

Compensation of county superintendent.

25. It shall be the duty of the board of supervisors for each county to make such allowance, not less than one hundred not more than five hundred dollars, out of the school fund, adjusted to the amount of labor performed, in payment for his services, to each county superintendent, as justice and right may require.

State superintendent—how elected and term of.

26. The state superintendent shall be elected by a joint vote of both branches of the legislature. He shall hold his office for the term of two years and until his successor is qualified. The first election shall be at the session of the legislature convening on the third Tuesday of January, eighteen hundred and sixty-four. The state superintendent first elected shall hold his office, commencing on the first day of June next, for the unexpired term ending on the third day of March, eighteen hundred and sixty-five. When a vacancy may occur in said office

Vacancies.

by death, resignation, or otherwise, the governor shall fill the same by appointment for the unexpired term.

Bond of state superintendent.

27. Before entering upon the discharge of his official duties, the said state superintendent shall give bond in the sum of three thousand dollars, with good security; which bond, with the certificate of his oath endorsed thereon, made and taken before the secretary of the state, shall be filed in the office of the treasurer of the state.

Duties of state superintendent.

28. The state superintendent shall be charged with the general supervision of all county superintendents and all the free schools of the state; and shall see that the school system is, as early as practicable, carried into effect and put in uniform operation. He shall prescribe and cause to be prepared all forms and blanks necessary in the details of the system so as to secure its uniform operation throughout the state; and shall cause the same to be forwarded to the several county superintendents, to be by them distributed to the several persons entitled to receive the same. He shall decide upon a written statement of the facts, all questions and controversies arising out of the interpretation and construction of the school laws in regard to the rights, powers and duties of township boards of education, school commissioners and county superintendents, and shall keep a record of all such decisions. He shall cause as many copies of this act and all other school acts in force, with the above decisions appended thereto, with such forms, regulations and instructions as he may judge expedient, thereto annexed, to be from time to time published, as he may deem expedient; and shall cause the same to be forwarded to the county superintendents, to be by them distributed to the persons entitled to receive them.

Duties of state superintendent.

29. He shall, at the time and place to be appointed by him, convene the county superintendents within each judicial circuit of the state once in each year, for the purpose of conference upon the interests of education within their several jurisdictions, and giving such instructions and making such suggestions in regard to the discharge of their several duties as to him may seem expedient, and as the interests of education may seem to require. He shall take advantage of such meetings to address the people on the subject of education, and in exposition of the system of free schools as established in this state.

Duties of state superintendent.

30. It shall be the duty of the state superintendent to aim at perfecting the system of free schools as established in this state; and for this purpose it shall be his duty to correspond with educators and school officers abroad, to acquaint himself with the various systems of free schools established in other states and in other countries, to collate their results as exhibited in the reports of their several superintendents, and to use all efforts and means which will be necessary to enable him to render available to the purposes of the legislature, the combined results of the experince of other communities, with his own experience and observation. He shall acquaint himself intimately with the peculiar educational wants of each section of the state, and shall take all proper means to supply them, so that the schools shall

be, as nearly as possible, equal and uniform in grade throughout the state. He shall acquaint himself with the different systems and methods of instruction which may be introduced among educators, and shall explain and recommend such as experience and sound principles of education may have demonstrated to be valuable; and, generally, it shall be his duty to endeavor to render available to the people of this State all such improvements in the system of free schools, and in the methods of instruction, as may have been tested and proved by the experience of other communities and the best educators abroad.

Duties of state superintendent.

31. He shall, annually, on or before the first day of August, report to the auditor the number of persons between the ages of six and twenty-one years in each county in the state, also a report of all township boards which have failed to make the enumeration required in the sixth section of this act; and shall, at each session of the legislature, make a report to the same in regard to the condition of free schools within the state, embracing all statistics compiled from the reports of the county superintendents, which will be necessary to give a proper exhibition of the workings of the system, together with such plans as he may have matured for the management and improvement of the free school fund, and for the better and more perfect organization and efficiency of free schools, and likewise all such matters in relation to his office and to the free schools as he may deem it expedient to communicate.

Office of state superintendent.

32. The state superintendent shall have his office at the seat of government, where a suitable office shall be provided for him, supplied with the necessary furniture and fixtures, and provided with such blank books and stationery as the business of the office may require.

Seal for the department of free schools.

33. He shall provide a seal with suitable device, for the department of free schools, and copies of papers deposited or filed therein, and all official acts and decisions, may be authenticated under said seal, and when so authenticated, shall be evidence equally and in like manner with the originals. He shall sign all requisitions on the auditor for the payment of such money to the treasurers of the several counties for the use of the free schools as they may be entitled to receive from the State, and for all other money to be paid out of the treasury of the State for school purposes.

Disbursement of state school fund

Salary of state superintendent.

34. He shall receive annually, the sum of one thousand five hundred dollars in payment of his services, to be paid quarterly out of the school fund, upon the warrant of the auditor.

Examination of teachers and granting of certificates.

35. In order to afford encouragement and incentive to teachers to perfect themselves in their profession, and at the same time to secure the profession from the intrusion of unworthy members and the public from the evils of incompetent teachers, the following regulations shall be observed by county superintendents in regard to examinations and the granting of teachers' certificates: *First*, No applicant shall be admitted to an examination unless the county superintendent shall have reasonable evidence that he or she is of good moral character, and loyal to the Government of the United States. Profanity, obscen-

Good moral character and loyalty required.

ity and intemperate habits, shall always be held to exclude from the privilege of an examination. *Second*, No college diploma or certificate, or recommendation from the president or faculty of any college or academy, shall be taken to supersede the necessity of examination by the county superintendent. *Third*, County superintendents shall grade the certificates granted according to the following scheme, numbering them according to the merits of the applicant from one to five. Number three shall be assumed as the medium between a very good and an indifferent teacher, so that the scheme will stand thus: Number one, a very good teacher—one accomplished in every respect; number two, a good teacher; number three, medium; number four, below medium; number five, indifferent. A number five certificate shall never be granted to any teacher more than once. If, upon a second examination, the applicant is not found entitled to a higher grade, no certificate shall be granted. A number four certificate shall not be granted more than twice in succession to the same applicant. If, at the third examination, the applicant is not found entitled to a higher grade, no certificate shall be granted. When any teacher has received three number one certificates, he shall be entitled to receive from the county superintendent a recommendation to the state superintendent for examination, and if found worthy, the state superintendent shall grant him a professional certificate in proper form, engraved upon parchment, authenticated by the seal of his office and attested by his signature thereto; by which certificate the bearer shall be held to be legally admitted to the profession of teacher within the state of West Virginia; which certificate shall be valid throughout the state and during the life of the bearer thereof: provided, that the state superintendent may revoke such professional certificate for immorality or disloyalty when clearly proven. For every professional certificate so granted, a fee of three dollars shall be charged, to be applied to the use of free schools. And it is further provided, that from and after five years from the passage of this act, no person shall be eligible to the office of county superintendent who shall not have received such professional certificate. And it is hereby made the duty of each county superintendent, on or before the first day of June in each year, to make out and transmit to the state superintendent a list of all candidates examined by him during the year, stating their names and residence, with the grade of certificate granted to each; from which the state superintendent shall make out and transmit to the county superintendents a general list containing the names, residence and grade of certificate of each person examined within the state during the year; which lists shall be kept in the offices of the county superintendents for information and reference.

Diplomas. &c., disregarded.

Grading of certificates by county superintendents.

Examination and certificate by state superintendent.

Fee therefor.

Such certificate a condition of eligibility as county superintendent.

Lists of certificates.

General school fund.

36. There shall be constituted a fund for the support of free schools, which shall belong in common to the people of this state, and which shall consist of all such sums as have accrued or may hereafter accrue to this State from any of the sources enumerated in the first section of the tenth article of the constitution; and it is hereby made the duty of the auditor, from and after the passage of this act, and from time to time thereafter, as such sums may accrue to and be paid into the

Duty of auditor respecting.

treasury of the state, to pass such sums of money to the credit of the free school fund; and the state of West Virginia is hereby pledged to pay the interest annually on all such sums of money as may have been paid into the treasury of the state, from any of the sources above mentioned, at the rate of six per cent. per annum. And it is further made the duty of the said auditor, to open in a book to be provided for the purpose, an interest account with the said fund, in which shall be stated all items of interest accruing from said fund from the time any principal sum was paid into the treasury, until the end of the fiscal year; which interest shall be distributed among the several counties of this state, for the support of free schools as hereinafter provided. And it is further made the duty of the said auditor, as soon as a state superintendent is elected and qualified, according to the provisions of this act, to ascertain and report to the said superintendent all sums belonging to the literary fund of Virginia which may have been invested within the boundaries of this State, whether loaned to corporations or private individuals, or invested in any kind of stocks, and what interest or dividends may have accrued thereon to the credit of the literary fund since the first day of June, eighteen hundred and sixty-one, and how the same has been disposed of.

School fund for distribution.

37. In addition to the interest of the free school fund, there shall likewise be distributed, according to the second section of the tenth article of the constitution, and in the manner herein provided, the net proceeds of all fines, confiscations and forfeitures accrueing to this state under the laws thereof; together with the proceeds of a capitation tax of one dollar on each white and free colored male inhabitant over twenty-one years of age, and such sum as may be produced by a tax of ten cents upon the hundred dollars' valuation of all taxable property of the State at the last annual assessment; which tax shall be assessed and collected at the same time and in the same manner as other state taxes are assessed and collected. And the officer collecting such tax shall be allowed a commission thereon, at the same rate per cent as may be allowed by law for the collection of other state taxes; which taxes, when so collected, shall be paid into the the treasury of the state, to be distributed annually with other school funds herein described to the several counties of the state in proportion to their enumeration of scholars.

Collection of school tax on property.

Commission of collector.

Apportionment of school fund by auditor.

38. It shall be the duty of the auditor, on or before the first day of April, in each year, after deducting the salary of the state superintendent and all the necessary expenses of his office, to apportion among the several counties of the state, the money remaining in the treasury for distribution for school purposes, according to the number of youth resident in each county of the state, between the ages of six and twenty-one years, according to the list furnished him by the state superintendent, and to notify the said superintendent of such appointment, with the amount which each county is entitled to receive. The said superintendent shall thereupon draw his requisitions upon the auditor in favor of the treasurers of the several counties, for such amounts as they are respectively entitled to receive, according to the

Duties of township superintendents respecting.

apportionment of the auditor, and shall at the same time notify the several county superintendents of the amounts to which their several counties are entitled. And each county superintendent upon receiving notification of the amount to which his county is entitled, shall, after deducting the amount of his own salary, apportion the remainder among the several townships of his county entitled thereto, according to the number of youth resident within the same, between the ages of six and twenty-one years, and shall notify the several township clerks of the amount appropriated to their respective townships.

39. It shall be the duty of the board of education of each township of the state to submit to a meeting of the qualified voters of their township, at the regular annual township meeting, an estimate, as near as practicable, of the amount of money necessary for the purpose of prolonging the schools in the districts after the state funds have been exhausted, so that free schools shall be continued in every district for the term of six months, at least, in each year; and said meeting shall proceed to assess the amount of tax to be levied for such purpose, not exceeding ten cents upon the hundred dollars' valuation, as aforesaid. The minutes of the meeting shall be recorded and preserved in the record book of the township board of education. And the rate per cent so decided upon the board shall make known by certificate in writing, within ten days, including any tax which may have been voted by a special meeting, for the establishment of high schools, as provided in the tenth section, to the county superintendent, who shall levy the entire amount of such assessment on all the taxable property of the township; and such taxes so levied for school purposes, may be paid to the township treasurer on or before the first day of October next after said levy has been made. If not paid at that time, the township treasurer shall place tickets for said taxes, with ten per cent added thereto, in the hands of a collecting officer for the township, taking his receipt therefor; who shall collect and pay said taxes to the treasurer as other township taxes are collected and paid. Said collecting officer shall receive for his services ten per cent upon all money by him so collected.

Township levies for school purposes.

Commission for collecting same.

Township treasurer.

His bond.

40. The township treasurer shall be the treasurer of all school funds belonging to the township, arising from whatever sources; and before entering upon the duties imposed by this act, he shall give bond with security, approved by the board of education for the township, in double the probable amount of money that shall come into his hands; and said bond shall be filed with the clerk of the township; and on the forfeiture of such bond, it shall be the duty of the township clerk to prosecute and collect the same for the use of free schools in the township, and if such township clerk shall neglect or refuse to so prosecute, then any freeholder may cause such prosecution to be instituted.

Duties of township clerk respecting same.

Restrictions on treasurer by county superintendent.

41. The county superintendent shall issue to the township treasurer an order for the payment to him of any school funds funds belonging to the township, but before said order shall issue, such treasurer shall

furnish the superintendent with a certificate from the township clerk that said treasurer has executed and filed with him a proper bond, and also stating the amount of said bond; and the county superintendent shall not permit the said treasurer to have in his hands, at any one time, an amount of school funds over one half the amount of the penalty in such bond; and the township board of education shall allow the township treasurer a compensation equal to one per cent. on all school funds disbursed by him, to be paid on the order of the township clerk out of the said school funds.

Treasurer's annual settlement.

42. The township treasurer shall, annually, between the first and fifteenth days of May, settle with the county superintendent and account to him for all money received, from whom, and on what account, and the amount paid out for school purposes in his township. The county superintendent shall examine the vouchers for such payments, and, if satisfied with the correctness thereof, shall certify the same; which certificate shall be a discharge of such treasurer; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office all books and papers, with all money or other property in his hands belonging to said township or to schools therein, and also all orders he may have redeemed since his last annual settlement with the county superintendent and take receipt therefor, which he shall deposit with the township clerk within ten days thereafter.

Delivery of books and papers at expiration of his term.

Failure of treasurer to make annual settlement.

43. In case the township treasurer shall fail to make such annual settlement within the time prescribed in the preceding section, he shall forfeit fifty dollars, to be recoved before any court having jurisdiction, in the name of the state of West Virginia, for the use of free schools in the proper township; and it is made the duty of the township clerk to proceed forthwith, in case of such failure, by suit against such treasurer to recover the penalty aforesaid; but when it shall appear on trial, to the satisfaction of the court, that said treasurer was prevented from making such settlement within the time prescribed, by sickness or unavoidable absence from home, and that such settlement has since been actually made, the court shall discharge such treasurer on the payment of costs.

School houses and school house sites.

Tax by districts to provide same.

Building fund.

44. It shall be the duty of the several township boards of education, so soon as practicable, after their township has been sub-divided as provided in the sixth section of this act, to provide school houses in such locations as will best accomodate the majority of the inhabitants of such sub-divisions, and to furnish them with such furniture and other appendages as are necessary to the comfort, health and progress of the pupils; and for this purpose they are hereby empowered to levy a tax of five cents on the hundred dollars, on the taxable property of the district; which tax shall be assessed by the township clerk, upon the basis of the last valuation for state purposes; and a duplicate of such assessment shall be delivered to such collector as may be appointed by the board; and when collected shall be paid over to such treasurer as the board, under proper regulations looking to the security of the fund, may appoint; and the amounts so collected and paid over, together with all gifts, grants, donations and devises, which may

be made for such purpose, shall constitute a building fund to be exclusively appropriated to the purchase of sites for school houses, the construction and furnishing of the same, or for the rent, hire or repair of such property for the use of the free schools of the district.

Houses and sites in present use.

45. Wherever school houses, school house sites or other property, is now held by trustees or others for the use of schools, the board of education of the township in which such property is held shall procure conveyance of the same for the use of free schools wherever practicable, and shall cause all such property to be valued by three disinterested persons not resident within the sub-division in which such property is located; and the amount of such valuation shall be credited to the inhabitants of the sub-division in which such property is located, on their annual assessment for building purposes.

Examination of same.

46. It shall be the duty of the boards of education within the several townships, as soon as practicable, after the passage of this act, and on a day to be appointed by the county superintendent, to examine, in connection with the county iuperintendent, all the school houses and school property within their district, and of which they may have received conveyance; and all such school houses as are conveniently and properly located, and are deemed sufficient or capable of being rendered so by repair or alteration of structure, shall be established as the school houses of the respective sub-divisions within which they are located; and all houses which are inconveniently or improperly located, or insufficient and incapable of being rendered sufficient by a reasonable expenditure, shall be condemned and sold at public sale, the proceeds thereof being added to the building fund.

Duty of county superintendent respecting school houses.

47. No new school house shall be erected, or an old one improved, unless the plan thereof shall have been submitted to the county superintendent and approved by him; and it is hereby made the duty of the county superintendent to acquaint himself with the principles of school house architecture, and in all his plans for such structures to have regard to economy, convenience and durability of structure. And in order to aid the county superintendents in this branch of their duties, it is hereby made the duty of the state superintendent to furnish, at the expense of the school fund, the office of each county superintendent within the state with one copy of "Barnard's School House Architecture," or such other standard work upon the subject as he may prefer; such work to be kept in the office of the county superintendent for consultation and reference, and to be delivered by him to his successor.

Authority of boards of education to borrow money for building.

48. The boards of education of the several townships may borrow money for building purposes upon the credit of the building fund, but no greater amount of money shall be borrowed at any one time than the proceeds of the fund for five years would be sufficient to liquidate, nor shall the building fund of any township be pledged for any debt for a longer period than five years.

Condemnation of land for school house sites.

49. When land has been designated by the board of education of any township as a suitable location for a school house and the neces-

sary buildings, or for the enlarging of a school house lot, if the owner or owners refuse to sell the same, or demand a price therefor which is deemed by the board unreasonable, the board of education may petition the circuit court of their county to have such lot of ground condemned for the use of public schools, and to have a jury of viewers appointed, to consist of three discreet persons not resident within the township within which such land is located, who, being duly sworn or affirmed faithfully and impartially to try all matters submitted to them, shall assess the value of such land, and upon due return being made of such assessment, and the amount thereof being paid or tendered to the owner or owners of the land in question, the said board may enter thereon and use such land for school house purposes: provided, that no land shall be taken which shall exceed in quantity one acre.

School property exempted from taxation and execution.

50. All school houses, school house sites and other property for the use of free schools, shall be exempt from taxation, and also from sale on execution, or other process in the nature of an execution.

School year and month.

51. The school year shall commence on the first day of September, and all reports, settlements, and so-forth, shall be made in reference to that day. The school month shall be held to consist of twenty-two days in all contracts with teachers, and other operations of the boards of education; and no school shall be kept in operation for the purposes of ordinary instruction on any Saturday; but it shall be taken as a part of the contract with every teacher, that two Saturdays of every month shall be devoted by the teachers of each district to appropriate exercises for mutual improvement, under such regulations as the board of education, under the instructions of the county superintendent, may designate.

Board of education for the district of Wheeling.

52. The board of education of the district composed of the city of Wheeling and the parts of townships connected therewith, shall consist of two commissioners from each township of the district, elected by the qualified voters thereof at the annual township election, for the term of three years and until their successors are elected and qualified; which commissioners, when elected and qualified, shall at their first meeting elect an additional commissioner from the district at large; and the commissioners so elected shall constitute the board of education for the district of Wheeling, and as such shall be invested with the same rights, and shall exercise the same powers and perform the same duties, as appertain by this act to the boards of education of the several townships, and shall in all other respects conform to the provisions of this act. The said board shall at their first meeting elect one of their own number clerk, who shall perform all the duties which are devolved by this act upon the clerk of the township as secretary of the board of education, but shall not, in consequence of being clerk, be deprived of his right to vote upon any question pending before the board. The said board shall have power to make such by-laws and regulations, not inconsistent with the provisions of this act, as they may deem necessary for the better management and regulations of the schools under their charge. Wherever the word "township" occurs in this act, it shall be construed to mean "school district," when-

How constituted.

Their clerk and treasurer.

ever necessary to give effect to the provisions of this section. The treasurer of Ohio county shall be the treasurer of all the funds for school purposes belonging to the district described in this section; and he shall conform to all the requirements made of township treasurers in regard to funds for school purposes.

Board of school fund.

53. The governor, auditor, treasurer, secretary of the state, and the general superintendent of free schools, shall be a corporation under the name of the "The board of the school fund," and shall have the management, control and investment of said fund, under the first section of the tenth article of the constitution.

Officers of same.

54. The governor shall be the president of the board, and in his absence the board may choose one of their number to officiate temporarily in his place. The auditor shall be the secretary of the board. A faithful record shall be kept of all their proceedings, and a copy thereof, certified by the secretary of the board, shall be evidence in all cases in which the original would be.

Meetings and proceedings of same.

55. A meeting of the board may be held at any time, upon the call of any member thereof, provided notice be given to all the members who may be at the seat of government. The auditor's office shall be the place of meeting, and the proceedings shall be signed by the president of the meeting for that day, and shall be open to inspection at all times.

Recovery of money due school fund.

56. All money which ought to be paid into the treasury to the credit of the school fund shall be recoverable with interest, by action or motion, in any court having jurisdiction; and the auditor shall institute and prosecute said action or motion when thereto directed by the board.

Appointment of agents by board of the school fund.

57. The board may appoint agents for the collection of debts or claims, and authorize them to secure payment thereof, and protect the interests of the school fund, on such terms as it may approve. They shall take bond from said agent if any money is to come into his hands; and any agent selling lands when directed to do so by the board, shall execute a deed (with the resolution giving such direction thereto annexed,) conveying to the purchaser by special warranty. Said agent may be allowed by the board a compensation not exceeding in any case five per cent. on the money actually paid into the treasury.

Investment of school fund.

58. The board shall from time to time invest all the uninvested capital and interest of the school fund in interest-bearing securities of the United States or of this State, as provided for in the constitution.

Duties of auditor as member of the board.

59. The auditor shall be the accountant of the board, exercising any of their powers, except that he shall not, without special authority entered upon the records of their proceedings, dispose of any property, or invest any money of the school fund. He shall place the securities in which said school fund is invested, in such depository for safe keeping, as the board shall direct.

60. The auditor, shall annually, before the first day of November, deliver to the governor and to the general superintendent of free schools, each, a report made up to the first day of October next preceding, of the condition of the school fund, with an abstract of the accounts thereof in his office; which report the general superintendent shall lay before the legislature in his next annual report to that body. **His annual report on the school fund.**

61. All money belonging to the school fund shall be received into and paid out of the treasury, upon the warrant of the auditor. But no warrant for paying out such money shall be issued without the authority of the board. **Payment into treasury and disbursement of school money.**

62. All acts and laws heretofore existing in this State, in any way inconsistent with the provisions of this act, are hereby repealed. **Laws repealed.**

JOINT RESOLUTIONS.

[No. 1.] *Joint Resolution declaring the Election of certain Officers.*

Resolved by the Legislature of West Virginia, That Arthur I. Boreman be, and he is hereby, declared duly elected to the office of governor of this State; J. Edgar Boyers to the office of secretary of the state; Campbell Tarr to the office of treasurer; Samuel Crane to the office of auditor; Aquilla B. Caldwell to the office of attorney general; Ralph L. Berkshire, William A. Harrison and James H. Brown, respectively, to the office of judge of the supreme court of appeals; Elbert H. Caldwell to the office of judge of the first circuit; John H. Dille to the office of judge of the second circuit; Thomas W. Harrison to the office of judge of the third circuit; Chapman J. Stuart to the office of judge of the fourth circuit; Robert Irvine to the office of judge of the fifth circuit; George Loomis to the office of judge of the sixth circuit; Daniel Polsley to the office of judge of the seventh circuit; Henry Jefferson Samuels to the office of judge of the eighth circuit; and John W. Kennedy to the office of judge of the tenth circuit; and that provision should be made by law for filling, as speedily as possible, the vacancy which appears to exist in the office of judge of the ninth circuit.

ADOPTED, June 20, 1863.

[No. 2.] *Joint Resolution raising a Committee on Seals.*

Resolved by the Legislature of West Virginia, That a committee be appointed to devise and report suitable devices and inscriptions for the seals of the state, and report the same to the legislature; and that until such seals are adopted and ready for use, the governor be authorized to affix his private seal to all instruments otherwise requiring the seal of the state.

ADOPTED, June 23, 1863.

[No. 3.] *Joint Resolution requesting the Governor to procure the Statutes of other States.*

Resolved by the Legislature of West Virginia, That his excellency Governor Boreman, be requested to address a letter to the governors of the several loyal states, asking them to furnish for the use of the state of West Virginia, a copy of the statutes of their several states.

ADOPTED, June 24, 1863.

[No. 4.] *Joint Resolution referring a Communication from the Auditor.*

Resolved by the Legislature of West Virginia, That the communication of the auditor be referred to the governor, with authority to take such steps in the premises as he may deem proper.

ADOPTED, June 25, 1863.

[No. 5.] *Joint Resolution fixing a day for the Election of Public Printer.*

Resolved by the Legislature of West Virginia, That the two Houses proceed on Wednesday, July first, to the election of a public printer.

ADOPTED, June 30, 1863.

[No. 6.] *Joint Resolution providing for a Recess.*

Resolved by the Legislature of West Virginia, That when it adjourn to-day, it will adjourn to meet on Tuesday next.

ADOPTED, July 2, 1863.

[No. 7.] *Joint Resolution raising a Committee to examine the Lunatic Asylum at Weston.*

Resolved by the Legislature of West Virginia, That a committee of two from the House and one from the Senate, shall be appointed to inquire into and report the progress made in the construction of the lunatic asylum at Weston; how soon the same or any part thereof will be ready for use or occupancy; the character of the work done; the amount already expended in the construction of said asylum; what balance (if any) of the appropriation heretofore made is unexpended; and that the said committee also ascertain and report whether a portion of said building can be fitted up for a temporary penitentiary, without detriment to the building in view of its original purpose. If the committee cannot otherwise procure the information desired, it is hereby instructed to go to Weston and inspect said work, and examine the accounts of vouchers of expenditures.

ADOPTED, July 17, 1863.

[No. 8.] *Joint Resolution fixing a day for the election of United States Senators.*

Resolved by the Legislature of West Virginia, That it will proceed, on Tuesday, the fourth day of August, eighteen hundred and sixty-three, at eleven o'clock, A. M., to the election of two United States senators for the state of West Virginia.

ADOPTED, July 20, 1863.

[No. 9.] *Joint Resolution raising a Committee to procure in settlement the Money appropriated to this State by Act of the General Assembly of Virginia.*

Resolved by the Legislature of West Virginia, That a joint committee be appointed, consisting of three on the part of the House and two on the part of the Senate, to ascertain and adjust the amount coming to this State under the act of February fourth, eighteen hundred and sixty-three, passed by the general assembly of Virginia, entitled "An Act making an appropriation to the proposed state of West Virginia, &c," and to cause the said money to be passed to the credit of the treasury of this State; and make report to the legislature at as early a day as convenient.

ADOPTED, July 23, 1863.

[No. 10.] *Joint Resolution raising a Committee to examine the Auditor's Office.*

Resolved by the Legislature of West Virginia, That a committee of five from the House and two from the Senate are hereby appointed to examine the audi-

tor's office, and instructed to report if any further legislation is necessary to enable the auditor to discharge his duties; and shall further report any facts deemed pertinent by them.

ADOPTED, July 28, 1863.

[No. 11.] *Joint Resolution providing for a Recess.*

Resolved by the Legislature of West Virginia, That when the Legislature adjourn on Wednesday, the fifth day of August, it will adjourn to meet on the second day of September; provided, that members and officers of the Legislature shall receive no pay for the time during such recess.

ADOPTED, August 1, 1863.

[No. 12.] *Joint Resolution respecting the Printing of the Acts.*

Resolved by the Legislature of West Virginia, That instead of the number heretofore directed, there be printed in all two thousand five hundred copies of the acts; of which five hundred shall be distributed, in sheets, among the members, as the session progresses, and the remainder be reserved to be indexed and half bound, in the usual manner, at the end of the session; and that two thousand copies of the constitution be printed and bound with the acts of the legislature.

ADOPTED, August 1, 1863.

[No. 13.] *Joint Resolution respecting the Delivery of the Books and Papers in the Auditor's Office.*

Resolved by the Legislature of West Virginia, That the governor of this State be authorized to receive from the governor of Virginia the books and papers of the auditor's office, referred to in the message of July 28, 1863, and for and on behalf of this State, to give a proper receipt for the same, engaging to deliver them to the proper authorities of the state of Virginia, if they shall be demanded.

ADOPTED, August 5, 1863.

[No. 14.] *Joint Resolution authorizing the Treasurer to receive Money due from the state of Virginia.*

Resolved by the Legislature of West Virginia, That the treasurer of the state of West Virginia be authorized to receive and place to the credit of West Virginia, from the treasurer of the commonwealth of Virginia, the sum of forty-five thousand seven hundred and seventy-one dollars and fifty cents, the balance found to be due from the commonwealth of Virginia to the state of West Virginia, by the joint committee appointed to settle and adjust the amount coming to this State under the act of February 4, 1863.

ADOPTED, August 5, 1863.

[No. 15.] *Joint Resolution relating to the Payment of certain Claims against the State of Virginia.*

Resolved by the Legislature of West Virginia, That a joint committee of three from the Senate and five from the House of Delegates, be appointed to inquire into the expediency of providing for the auditing and paying of out-

standing claims against the commonwealth of Virginia within the limits of this State, and that said committee report by bill or otherwise.

ADOPTED, September 12, 1863.

[No. 16.] *Joint Resolution expressing Sympathy with the Loyal People af East Tennessee.*

Resolved by the Legislature of West Virginia, That we have heard with delight the cheering news of the recent triumph of our arms in the south and southwest; and especially do we hail with unbounded joy the tidings of the deliverance of our suffering loyal brethren of East Tennessee from the despotism of the so-called Southern Confederacy. We assure them of our sympathy for their suffering, our pride in their unconquerable devotion to their country, and our determination to co-operate with them in defending their liberty, and in sustaining the government in its efforts to crush out the accursed rebellion which has desolated their homes and ours.

ADOPTED, September 17, 1863.

[No. 17.] *Joint Resolution construing the "Act making an appropriation of $50,000 for procuring Arms, Equipments, and Munitions of War, &c."*

It being represented to the legislature that there is doubt as to the construction of an act, passed July second, eighteen hundred and sixty-three, entitled "An Act making an appropriation of fifty thousand dollars for procuring arms, equipments and munitions of war,"

Resolved by the Legislature of West Virginia, That said appropriation was intended, and is hereby construed, so as to cover all expenses incident to the organization of the militia, and their pay and subsistence while in actual service since the twentieth day of June, eighteen hundred and sixty-three.

ADOPTED, September 17, 1863.

[No. 18.] *Joint Resolution raising a Committee to consider the Military Condition of the State.*

Resolved by the Legislature of West Virginia, That a committee of two members of the Senate, and three of the House of Delegates, shall be appointed to consider and report what steps should and can with propriety be taken by this legislature to insure a more efficient defense of the persons and property of our citizens against the common enemy, including the guerrilla bands by whom so large a portion of our territory is now infested.

ADOPTED, September 24, 1863.

[No. 19.] *Joint Resolution raising a Committee to examine and report upon certain Militia Claims.*

Resolved by the Legislature of West Virginia, That a committee be appointed, composed of two from the Senate and three from the House, to examine all claims for militia services within the bounds of this State, rendered since the beginning of the present war, including the fees and other expenses of enrolling, organizing and examining the militia, under general order number ninety-eight, of the war department; and report to each house as to the amount and justice of each claim.

ADOPTED, September 24, 1863.

[No. 20.] *Joint Resolutions relating to the State Seals.*

Resolved by the Legislature of West Virginia:

1. The legend, mottoes and devices reported by the committee on the subject, are hereby adopted as the legend, mottoes and devices of the coat of arms and great and less seals of the State, respectively.

2. So much of the report of the said committee as is descriptive of the said legend, mottoes and devices is hereby directed to be published with these resolutions in the volume of the acts and joint resolutions passed at the present session of the legislature.

3. The governor is authorized and requested to have engraved a great and less seal, of the dimensions, and bearing the devices, &c., recommended by the said report, the same to be the only legal official seals of the State; and also to procure proper presses for conveniently using the same.

ADOPTED, September 26, 1863.

[No. 21.] *Joint Resolution relative to an Appropriation of* $600,000 *for Military purposes.*

Resolved by the Legislature of West Virginia, That a joint committee, consisting of three members from the House and two from the Senate, be appointed to inquire into the expediency of reporting a bill making an appropriation of six hundred thousand dollars for military purposes for the defense of the State, subject to the order of the governor.

ADOPTED, October 1, 1863.

[No. 22.] *Joint Resolution concerning Poll Books and Forms of Election.*

Resolved by the Legislature of West Virginia, That the secretary of the state be and he is hereby directed to procure and furnish the superintendents of elections for the several counties in the State, the poll-books and forms to be distributed by them under the fifth section of the election law, passed September twenty-fourth, eighteen hundred and sixty-three.

ADOPTED, October 5, 1863.

[No. 23.] *Joint Resolution raising a Committee to contract for the preparation of a Code.*

Resolved by the Legislature of West Virginia, That a joint committee of two from the House, and one from the Senate, be appointed to contract with Daniel Lamb, Esq., to prepare a Code of laws for the State; the work to be commenced, prosecuted, reported, completed and paid for, as may be agreed upon by the parties.

ADOPTED, October 8, 1863.

[No. 24.] *Joint Resolution respecting the construction of the second section of the Ordinance of the Constitutional Convention for the organization of the state of West Virginia.*

Resolved by the Legislature of West Virginia, That the terms of all officers, legislative, executive or judicial, elected on the twenty-eighth day of May last, began on the twentieth day of June following, and not previously. No such officer is or was at any time entitled to salary or compensation for any time preceding the twentieth day of June, in the present year.

ADOPTED, October 15, 1863.

[No. 25.] *Joint Resolution calling upon the Auditor for certain Information.*

Resolved by the Legislature of West Virginia, That the auditor is hereby peremptorily required to furnish, without delay, from all the sources accessible to him, the information required by a resolution of the House, adopted on the seventh day of July last, and by another resolution of the same, adopted on the seventeenth day of September last.

ADOPTED, October 17, 1863.

[No. 26.] *Joint Resolution relating to the Contract for a Code.*

Resolved by the Legislature of West Virginia, That House bill number one hundred and fifteen, "A bill to provide for revising, collating and digesting into a Code the laws now in force within this State," together with the contract upon which it is founded, be referred to the special joint committee with whom said contract with Daniel Lamb was made.

ADOPTED, October 23, 1863.

[No. 27.] *Joint Resolution in relation to the Navigation of the Ohio River.*

WHEREAS, by an act of the general assembly of Virginia, passed on the eighteenth day of December, in the year one thousand seven hundred and eighty-nine, preparatory to the erection of the district of Kentucky, then within the jurisdiction of the state of Virginia, into an independent state of the United States, it was, among other things, enacted, that "the use and navigation of the Ohio river, so far as the territory of Kentucky or of Virginia lies thereon, shall be free and common to the citizens of the United States;" which was confirmed by another act of the said general assembly, passed on the thirteenth day of January, in the year one thousand eight hundred, after the erection of the state of Kentucky; whereby the state of Virginia relinquished to the United States any right she may have had to the exclusive navigation of so much of the said river as previously to the cession of the North West Territory and the erection of the state of Kentucky was entirely within her territory and jurisdiction;

And, whereas, the said river is a navigable highway of commerce between different states of the Union, and the congress of the United States has, from the earliest period, in the administration of its power to regulate commerce among the several states, claimed and exercised the right to regulate the navigation of the said river to the exclusion of the states binding thereon, and has, moreover, derived a considerable revenue from the enrollment and licensing of vessels navigating the same, and has established ports of entry at its head and other places thereon;

And, whereas, it is the duty, as it is the right, of congress, and in accordance with its long established policy, to promote and facilitate commerce between the several states, by the improvement of navigable rivers constituting its immediate channels; and this duty, in reference to the Ohio river, has been repeatedly acknowledged by the passage and execution, from time to time, of laws having in view the partial improvement thereof;

And, whereas, the war prosecuted for the suppression of the existing rebellion, and, particularly, some of its more recent events, have forcibly demon-

strated that the safety in time of war and insurrection of several of the states, especially of those binding on the said river, imperatively demands that the navigation thereof should be so improved and maintained as to place and keep it, at all times, in a condition to permit the free passage throughout its whole course of armed vessels, and the easy transportation of troops and munitions of war from point to point on its banks, and between distant sections of the Union;

And, whereas, this legislature is informed that Congress, at its approaching session, will be again urged to appropriate the extraordinary sum of seventeen millions of dollars to the improvement of the Illinois and New York canals, each lying wholly within the bounds of a single state, and neither of them constituting by itself a channel of commerce between different states, on the alleged ground of the necessity of such improvement in time of war or insurrection, and, particularly, in time of war with a foreign power with whom we are now at peace;

And, whereas, the improvement of the said canals as proposed, would, in the absence of the thorough and permanent improvement of the Ohio river, tend to divert from this and other states a large portion of the commerce and transportation they now enjoy, and to deprive them of advantages they might otherwise derive from the projected railroad to the Pacific Ocean; therefore,

Resolved by the Legislature of West Virginia,

1. The senators and representatives of this State in Congress are earnestly requested to endeavor to obtain from that body the early passage of an act providing for the adequate and permanent improvement of the navigation of the Ohio river, with an appropriation of funds sufficient for the purpose.

2. The legislatures of all other states interested are requested to co-operate in effecting the object indicated in the foregoing resolution.

3. The governor is requested to forward a copy of this preamble and resolutions to the executives of each of the states binding on the Ohio river, and of such other states as are more immediately interested in the navigation thereof, with a request to lay the same before their respective legislatures.

ADOPTED, October 24, 1863.

[No. 28.] *Joint Resolution respecting the Report of the Joint Committee on the Auditor's Office.*

Resolved by the Legislature of West Virginia, That the report of the joint special committee in regard to the auditor's office be adopted and filed with the keeper of the rolls, and be not printed.

ADOPTED, October 29, 1863.

[No. 29.] *Joint Resolution prescribing how certain Money appropriated shall be paid.*

Resolved by the Legislature of West Virginia, That the sum of two thousand and twenty-eight dollars and twenty cents, which, by the "Act making appropriations," passed August fifth, eighteen hundred and sixty-three, was appropriated to the payment of expenses of elections held under and by virtue of the ordinances and schedule of the late constitutional convention, be paid to the sheriffs of the several counties specified in the report of the committee on taxation and finance; or if there be no such sheriff in any county, then to the su-

perintendents of the general election held in such county on the twenty-eighth of May last, to be paid over by them to the parties respectively entitled thereto; and the receipts of the said sheriff, or any of the superintendents of such counties where there is no sheriff, shall be sufficient vouchers to the auditor and treasurer of this State, for the payment of the amounts due the several counties, as per said report.

ADOPTED, November 2, 1863.

[No. 30.] *Joint Resolutions concerning the Auditor and Secretary of the State.*

WHEREAS, it appears by the recent report of the committee on executive offices, that the auditor and secretary of the state had, on the first and second days of this month, over-drawn from the treasury, the former the sum of four hundred and fifty-four dollars, and the latter the sum of three hundred and ninety-three dollars and twenty-eight cents, alleging such over-drafts to be due to them respectively, for their salaries from the fourth day of March to the twentieth day of June last, the latter being the day on which the State was inaugurated and the constitution thereof first came into operation;

And WHEREAS, the legislature, by a joint resolution, which finally passed on the fourteenth day of October, eighteen hundred and sixty-three, have formally declared, that "the terms of all officers, legislative, executive and judicial, elected on the twenty-eighth day of May last, began on the twentieth day of June following, and not previously," and that "no such officer is, or was at any time, entitled to salary or compensation for any time preceding the twentieth day of June in the present year;" therefore

Resolved by the Legislature of West Virginia,

1. Any officer who has drawn from the treasury of the State, or in any way received, compensation as such officer for any time previous to the twentieth day of June last, is hereby required, within ten days from the passage of this resolution, to refund the same to the governor, to be by him deposited in the treasury to the credit of the proper appropriation.

2. No officer failing to comply with the requisition of the foregoing resolution, shall be entitled to draw or receive from the treasury for his own use, any sum of money whatever, whether on account of his salary, or as compensation for his official services, until the money improperly drawn from the treasury by him as aforesaid, is made good.

ADOPTED, November 12, 1863.

[No. 31.] *Joint Resolution requesting the Governor to procure and communicate Information respecting the Blind.*

Resolved by the Legislature of West Virginia, That the governor of this State be respectfully requested to ascertain from the superintendent of the Asylum for the Blind of the state of Ohio, whether blind persons can be received and educated in said institution until this State can make suitable provision for the education of this unfortunate class of her citizens at home, and what will be the probable expense of their maintenance and education therein; and that he report such information as he may obtain in relation thereto, at as early a day as practicable, to the legislature.

ADOPTED, November 16, 1863.

[No. 32.] *Joint Resolution raising a Committee to lease the Lancasterian Academy.*

Resolved by the Legislature of West Virginia, That a committee of three, two on the part of the House and one on the part of the Senate, be appointed to contract with the trustees of the Lancasterian Academy, in the city of Wheeling, to lease to the state of West Virginia the academy building and grounds for a term of three years, with the privilege of retaining the property for five years, at an annual rent of one thousand dollars, to be paid in semi-annual payments.

ADOPTED, November 17, 1863.

[No. 33.] *Joint Resolution directing the Auditor to furnish and instruct the Assessors.*

Resolved by the Legislature of West Virginia, That the auditor be directed to prepare assessors' books, with proper headings, and forward them in due time to the assessors of the revenue, with instructions to them to proceed with the assessment of the land and property, leaving out the amount of tax to be charged until the legislature shall determine the rate of taxation.

ADOPTED, November 24, 1863.

[No. 34.] *Joint Resolution relating to a final Adjournment.*

Resolved by the Legislature of West Virginia, That when the legislature adjourn on Tuesday, the eighth day of December, it adjourn *sine die*.

ADOPTED, November 25, 1863.

[No. 35.] *Joint Resolution requesting the Governor to apply to the President for certain Information and Relief.*

WHEREAS, Considerable expenses have been incurred in organizing, and sustaining while so organized, loyal citizens into companies, battalions and regiments for our own protection against invasion and rebellion, also in supplying and defraying expenses for transporting and delivering arms and munitions of war for the use of loyal citizens of our State, therefore,

Resolved by the Legislature of West Virginia, That the governor be requested to apply to the President of the United States for relief from the fund appropriated by act of congress, passed July thirty-first, eighteen hundred and sixty-one, entitled "An Act making an appropriation to pay the expenses of transporting and delivering arms and munitions of war to the loyal citizens of the states of which the inhabitants now are, or hereafter may be in rebellion against the government of the United States and to provide for the expense of organizing them into companies, battalions, regiments, or otherwise for their own protection against domestic violence, insurrection, invasion or rebellion;" and ascertain, as far as may be consistent with the views of the President, the amount heretofore set apart or paid to the authorities of Virginia, at Wheeling, for the objects specified.

2. The representatives in Congress from this State, are hereby requested to aid our governor in procuring the relief and information hereby sought.

ADOPTED, December 7, 1863.

[No. 36.] *Joint Resolution extending time for Final Adjournment.*

Resolved by the Legislature of West Virginia, That the joint resolution, providing that when the two Houses adjourn on Tuesday, the 8th instant, they adjourn *sine die*, be rescinded.

Resolved, further, That when the two Houses adjourn on Friday, the 11th instant, they do adjourn *sine die*.

ADOPTED, December 8, 1863.

[No. 37.] *Joint Resolution relating to Forms for Justices and Constables.*

Resolved by the Legislature of West Virginia, That the reviser of the Code be requested to prepare, as soon as practicable, forms for the justices and constables of the State, to be used by them in their official capacity, in both civil and criminal cases. And, further, that when so prepared, the Clerk of the House of Delegates be authorized to have one thousand copies thereof printed in a form similar to the acts; five hundred of which he shall have bound with a like number of the acts already authorized to be printed and bound, which said five hundred copies of acts and forms bound together, or as many thereof as may be necessary, shall be distributed in the manner prescribed by law, to the justices of the State; and the remaining five hundred copies of said forms shall be delivered unbound to the Secretary of the State, and be by him distributed to such constables as may apply for them, in proportions of one copy to each constable in the State.

ADOPTED, December 8, 1863.

[No. 38.] *Joint Resolution respecting the Occupation of the Linsley Institute Building.*

Resolved by the Legislature of West Virginia, That the Governor be authorized, whenever he may deem it expedient to do so, to cause the executive offices, or any of them, to be removed to the Linsley Institute Building, and to designate what room or rooms in the said building shall be occupied for any office so removed.

Resolved, further, That the Governor have authority to rent any portion ot said building not required for the use of the Legislature, or for executive offices as aforesaid, to such person and on such terms as he may deem expedient; provided, that no part of the building shall be occupied or rented for schools during any session of the Legislature.

ADOPTED, December 9, 1863.

[No. 39.] *Joint Resolution imposing Certain Duties on the Clerk of the House of Delegates.*

Resolved by the Legislature of West Virginia, That the Clerk of the House of Delegates be authorized to distribute to the members of this Legislature, the parts of the acts authorized to be but not yet printed and distributed, to which they are entitled by joint resolution, passed on the first day of August, eighteen hundred and sixty-three; and also the acts in pamphlet form directed to be printed and distributed by the act passed on the seventh day of December, eighteen hundred and sixty-three, entitled "An Act authorizing the publication of an extra number of the laws;" and that he send the same by mail or express, as he shall deem most expedient.

ADOPTED, December 10, 1863.

[No. 40.] *Joint Resolution in relation to the Halls and Furniture of the Legislature.*

Resolved by the Legislature of West Virginia, That the Halls, and Committee and Clerks' rooms, of the Senate and House of Delegates, and all the furniture and fixtures thereto belonging, be given in charge, for the period between the adjournment of this and the meeting of the next Legislature, of S. G. W. Morrison, Sergeant-at-arms, and John H. Charnock, present janitor, of the House of Delegates; and that they be authorized to incur such expense as may be necessary to have the said halls and rooms in proper condition for the occupation of the next Legislature; and that they be allowed for the services herein required, such reasonable compensation as may be agreed upon.

ADOPTED, December 10, 1863.

[No. 41.] *Joint resolution concerning an Office for the Clerk of the Supreme Court af Appeals.*

Resolved by the Legislature of West Virginia, That the Governor be authorized to assign a room in the Linsley Institute, for an office for the Clerk of the Supreme Court of Appeals.

ADOPTED, December 11, 1863.

DESCRIPTION OF STATE SEALS.

[Extract from the report of the Joint Committee on Seals—adopted September 26, 1863.]

The disc of the great seal to be two and one-half inches in diameter.

The *obverse* to bear the legend, "*State of West Virginia,*" the constitutional designation of our republic, which, with the motto "*Montani semper liberi,*" (in English, "Mountaineers always free,") is to be inserted in the circumference. In the centre, a rock with ivy, emblematic of stability and continuance, and on the face of the rock the inscription "June 20, 1863," the date of our foundation, as if "graved with a pen of iron in the rock forever." On the right of the rock a farmer clothed in the traditional hunting shirt peculiar to this region, his right arm resting on the plow-handles, and his left supporting a woodman's axe, indicating that while our territory is partially cultivated, it is still in process of being cleared of the original forest. At his right, a sheaf of wheat and a cornstalk. On the left of the rock, a miner, indicated by a pick-axe on his shoulder, with barrels and lumps of mineral at his feet. On his left, an anvil, partly seen, on which rests a sledge hammer, typical of the mechanic arts, the whole indicating the principal pursuits and resources of the State. In front of the rock and figures, as if just laid down by the latter and ready to be resumed at a moment's notice, two hunter's rifles, crossed, and surmounted at the place of contact by the Phrygian cap, or cap of liberty, indicating that our freedom and independence were won and will be defended and maintained by arms.

The above to be also the legend, motto and device of the less seal, the disc of which, should have a diameter of an inch and a half.

The reverse of the great seal to be encircled by a wreath composed of laurel and oak leaves, emblematic of valor and strength, with fruits and cereals, pro-

ductions of our State. For device, a landscape. In the distance, on the left of the disc, wooded mountains, and on the right, a cultivated slope with the log frame house peculiar to this region. On the side of the mountain a representation of the viaduct on the line of the Baltimore and Ohio Railroad, in Preston county, one of the great engineering triumphs of the age, with a train of cars about to pass over it. Near the centre, a factory, in front of which a river with boats on the bank, and to the right of it nearer the foreground a derrick and shed appertaining to the production of salt and petroleum. In the foreground a meadow with cattle and sheep feeding and reposing, the whole indicating the leading characteristics, productions and pursuits of the State at this time. Above the mountains, &c., the sun emerging from the clouds, indicating that former obstacles to our prosperity are disappearing. In the rays of the sun, the motto "*Libertas e Fidelitate*," (in English, "liberty from loyalty,") indicating that our freedom and independence are the result of faithfulness to the principles of the Declaration of Independence and the National Constitution.

The committee further recommend that the above device and motto for the obverse of the great seal, be also adopted as the coat of arms of the State.

CONSTITUTION OF WEST VIRGINIA.

ARTICLE I.

1. The state of West Virginia shall be and remain one of the United States of America. The constitution of the United States, and the laws and treaties made in pursuance thrreof, shall be the supreme law of the land.

2. The following counties, formerly parts of the state of Virginia, shall be included in, and form part of, the state of West Virginia, namely: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this constitution, the said four counties shall also be included in, and form part of, the state of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this constitution, then the three last mentioned counties shall also be included in, and form part of, the state of West Virginia.

The state of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the state of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the state of Virginia, shall vest in, and be hereafter exercised by, the state of West Virginia.

3. The powers of government reside in all the citizens of the state, and can be rightfully exercised only in accordance with their will and appointment.

4. The legislative, executive and judicial departments of the government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions issued under state authority, shall run in the name of, and official bonds shall be made payable to, the state of West Virginia. Indictments shall conclude "against the peace and dignity of the state of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

ARTICLE II.

BILL OF RIGHTS.

1. The privilege of the writ of *habeas corpus* shall not be suspended except when in time of invasion, insurrection or other public danger, the public safety may require it. No person shall be held to answer for treason, felony or other crime not cognizable by a justice, unless on presentment or indictment of a grand jury. No bill of attainder, *ex post facto* law, or law impairing the obligation of a contract, shall be passed.

2. Excessive bail shall not be required or excessive fines imposed, or cruel and unusual punishments inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be compelled to be a witness against himself, or be twice put in jeopardy for the same offence.

3. The right of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

4. No law abridging freedom of speech or of the press shall be passed; but the legislature may provide for the restraint and punishment of the publishing and vending of obscene books, papers and pictures, and of libel and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel or defamation. Attempts to justify and uphold an armed invasion of the State, or an organized insurrection therein, during the continuance of such invasion or insurrection, by publicly speaking, writing or printing, or by publishing or circulating such writing or printing, may be, by law, declared a misdemeanor, and punished accordingly.

5. In prosecutions and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the verdict shall be for the defendant.

6. Private property shall not be taken for public use without just compensation. No person, in time of peace, shall be deprived of life, liberty or property, without due process of law. The military shall be subordinate to the civil power.

7. In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury, if required by either party, shall be preserved. No fact tried by a jury shall be otherwise re-examined in any case than according to the rules of the common law.

8. The trial of crimes and misdemeanors, unless herein otherwise provided, shall be by jury, and shall be held publicly and without unreasonable delay, in the county where the alleged offence was committed, unless upon petition of the accused and for good cause shown, or in consequence of the existence of war or insurrection in such county, it is removed to, or instituted in, some other county. In all such trials the accused shall be informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel for his defense, and compulsory process for obtaining witnesses in his favor.

9. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, mo-

lested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

10. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason shall be punished, according to the character of the acts committed, by the infliction of one or more of the penalties of death, imprisonment, fine, or confiscation of the real and personal property of the offender, as may be prescribed by law.

ARTICLE III.

ELECTIONS AND OFFICERS.

1. The white male citizens of the State shall be entitled to vote at all elections held within the election districts in which they respectively reside: but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for thirty days, next preceding such offer, shall be permitted to vote while such disability continues.

2. In all elections by the people the mode of voting shall be by ballot.

3. No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process or be liable to attend any court or judicial proceeding as suitor, juror or witness; or to work upon the public roads, or, except in time of war or public danger, to render military service.

4. No persons, except citizens entitled to vote, shall be elected or appointed to any State, county or municipal office. Judges must have attained the age of thirty-five years, the Governor the age of thirty years, and the Attorney General and Senators the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State for five years next preceding, or at the time this constitution goes into operation.

5. Every person elected or appointed to any office or trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, make oath or affirmation that he will support the constitution of the United States, and the constitution of this State; and every citizen of this State may, in time of war, insurrection or public danger, be required by law to make the like oath or affirmation, upon pain of suspension of his right of voting and holding office under this constitution.

6. All officers elected or appointed under this constitution may be removed from office for misconduct, incompetence, neglect of duty or other causes, in

such manner as may be prescribed by general laws; and unless so removed, shall continue to discharge the duties of their respective offices, until their successors are elected or appointed and qualified.

7. The general elections of state and county officers, and of members of the legislature, shall be held on the fourth Thursday of October. The terms of such officers and members, not elected or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January next succeeding their election. Elections to fill vacancies shall be for the unexpired term. Vacancies shall be filled in such manner as may be prescribed by law.

8. The legislature, in cases not provided for in this constitution, shall prescribe by general laws, the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed and removed.

9. No extra compensation shall be granted or allowed to any public officer, agent or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

10. Any officer of the State may be impeached for maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor. The house of delegates shall have the sole power of impeachment. The senate shall have the sole power to try impeachments. When sitting for that purpose, the senators shall be on oath or affirmation; and no persons shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law. The senate may sit during the recess of the legislature, for the trial of impeachments.

11. Any citizen of this State, who shall, after the adoption of this constitution, either in or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do; or who shall act as a second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit under this State.

12. The legislature may provide for a registry of voters. They shall prescribe the manner of conducting and making returns of elections, and of determining contested elections; and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting.

ARTICLE IV.

LEGISLATURE.

1. The legislative power shall be vested in a Senate and House of Delegates. The style of their acts shall be, *"Be it enacted by the Legislature of West Virginia."*

2. The Senate shall be composed of eighteen and the House of Delegates of forty-seven members, subject to be increased according to the provisions hereinafter contained.

3. The term of office of Senators shall be two years, and that of Delegates one year. The Senators first elected shall divide themselves into two classes, one Senator from every district being assigned to each class; and of these

classes, the first, to be designated by lot in such manner as the Senate may determine, shall hold their offices for one year, and the second for two years; so that after the first election one-half of the Senators shall be elected annually.

4. For the election of Senators, the State shall be divided into nine senatorial districts; which number shall not be diminished, but may be increased as hereinafter provided. Every district shall choose two Senators, but after the first election both shall not be chosen from the same county. The districts shall be equal, as nearly as practicable, in white population, according to the returns of the United States census. They shall be compact, formed of contiguous territory, and bounded by county lines. After every such census, the Legislature shall alter the senatorial districts, so far as may be necessary to make them conform to the foregoing provisions.

5. Any senatorial district may at any time be divided, by county lines or otherwise, into two sections, which shall be equal, as nearly as practicable, in white population. If such division be made, each section shall elect one of the Senators for the district; and the Senators so elected shall be classified in such manner as the Senate may determine.

6. Until the senatorial districts are altered by the legislature after the next census, the counties of Hancock, Brooke and Ohio shall constitute the first senatorial district; Marshall, Wetzel and Marion the second; Monongalia, Preston and Taylor the third; Pleasants, Tyler, Ritchie, Doddridge and Harrison the fourth; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer the fifth; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the sixth; Mason, Putnam, Kanawha, Clay and Nicholas the seventh; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the eighth; and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the ninth.

7. For the election of delegates, every county containing a white population of less than half the ratio of representation for the House of Delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a delegate district.

8. When two or more counties are formed into a delegate district, the Legislature shall provide by law that the delegates to be chosen by the voters of the district shall be, in rotation, residents of each county, for a greater or less number of terms, proportioned, as nearly as can be conveniently done, to the white population of the several counties in the district.

9. After every census the delegates shall be apportioned as follows:

The ratio of representation for the House of Delegates shall be ascertained by dividing the whole white population of the State by the number of which the House is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall be assigned to each a number of delegates equal to the quotient obtained by this division, excluding the fractional remainder.

The additional delegates necessary to make up the number of which the House is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented. But every delegate district, and county not included in a delegate district, shall be entitled to at least one delegate.

10. Until a new apportionment is declared, the counties of Pleasants and Wood shall form the first delegate district; Calhoun and Gilmer, the second; Clay and Nicholas, the third; Webster and Pocahontas, the fourth; Tucker and Randolph, the fifth; and McDowell, Wyoming and Raleigh, the sixth. The first delegate district shall choose two delegates, and the other five, one each.

11. The delegates to be chosen by the first delegate district shall, for the first term, both be residents of the county of Wood; and for the second term, one shall be a resident of Wood and the other of Pleasants county; and so in rotation. The delegate to be chosen by the second delegate district shall, for the first term, be a resident of Gilmer, and for the second, of Calhoun county. The delegate to be chosen by the third delegate district shall, for the first two terms, be a resident of Nicholas, and for the third term of Clay county. The delegate to be chosen by the fourth delegate district shall, for the first two terms, be a resident of Pocahontas, and for the third term of Webster county. The delegate to be chosen by the fifth delegate district shall, for the first three terms, be a resident of Randolph, and for the fourth term of Tucker county. And the delegate to be chosen by the sixth delegate district shall, for the first term, be a resident of Raleigh, for the second term of Wyoming, for the third term of Raleigh, for the fourth term of Wyoming, and for the fifth term of McDowell county; and so, in each case, in rotation.

12. Until a new apportionment is declared, the apportionment of delegates to the counties not included in delegate districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia and Preston counties, two delegates each.

To Ohio county, three delegates.

To Greenbrier and Monroe counties together, three delegates: of whom, for the first term, two shall be residents of Greenbrier, and one of Monroe county; and for the second term, two shall be residents of Monroe and one of Greenbrier county; and so in rotation.

13. If the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, they shall, until the next apportionment, constitute the tenth senatorial district, and choose two senators. And if the counties of Frederick, Berkeley and Jefferson become part of this State, they shall, until the next apportionment, constitute the eleventh senatorial district, and choose two senators. And the number of the senate shall be, in the first case twenty, and in the last twenty-two, instead of eighteen.

14. If the seven last named counties become part of this State, the apportionment of delegates to the same shall, until the next apportionment, be as follows: to Pendleton and Hardy, one each; to Hampshire, Frederick and Jefferson, two each; and the counties of Morgan and Berkeley shall form the seventh delegate district, and choose two delegates; of whom, for the first term, one shall be a resident of Berkeley and the other of Morgan county; and for the second term, both shall be residents of Berkeley county; and so in rotation.

But if the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, and Frederick, Berkeley and Jefferson do not, then Pendle-

ton, Hardy and Morgan counties shall each choose one delegate, and Hampshire two, until the next apportionment.

The number of the house of delegates shall, instead of forty-seven, be in the first case fifty-seven, and in the last fifty-two.

15. The arrangement of the senatorial and delegate districts, and apportionment of delegates, shall hereafter be declared by law, as soon as possible after each succeeding census taken by authority of the United States. When so declared, they shall apply to the first general election for members of the legislature to be thereafter held, and shall continue in force, unchanged until such districts are altered and delegates apportioned under the succeeding census.

16. Additional territory may be admitted into and become part of this State with the consent of the legislature. And in such case, provision shall be made by law for the representation of the white population thereof in the senate and house of delegates, in conformity with the principles set forth in this constitution. And the number of members of which each branch of the legislature is to consist shall thereafter be increased by the representation assigned to such additional territory.

17. No person shall be a member of the legislature who shall not have resided within the district or county for which he was chosen one year next preceding his election; and if a senator or delegate remove from the district or county for which he was chosen, his office shall be thereby vacated.

18. No person holding an office of profit under this State or the United States, shall be a member of the legislature.

19. No person who may have collected, or been entrusted with public money, whether state, county, township or municipal, shall be eligible to the legislature, or to any office of honor, trust or profit, until he shall have duly accounted for and paid over such money according to law.

20. The legislature shall meet once in every year, and not oftener, unless convened by the governor. The regular sessions shall begin on the third Tuesday of January.

21. The governor may convene the legislature by proclamation, whenever in his opinion, the public safety or welfare shall require it. It shall be his duty to convene them on application of a majortiy of the members elected to each branch.

22. The seat of government shall be at the city of Wheeling, until a permanent seat of government be established by law.

23. When, for any cause, the legislature, in the opinion of the governor, cannot safely meet at the seat of government, the governor, by proclamation, may convene them at another place.

24. No session of the legislature, after the first, shall continue longer than forty-five days, without the concurrence of three-fourths of the members elected to each branch.

25. Neither branch, during the session, shall adjourn for more than two days, without the consent of the other. Nor shall either, without such consent, adjourn to any other place than that in which the legislature is then sitting.

26. Each branch shall be the judge of the elections, qualifications and returns of its own members.

27. A majority of each branch shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner as shall be prescribed by law.

28. The senate shall choose from their own body a president, and the house of delegates one of their own number as speaker. Each branch shall appoint its own officers and remove them at pleasure; and shall determine its own rules of proceeding.

29. Each branch may punish its own members for disorderly behavior; and, with the concurrence of two-thirds of the members present, expel a member, but not a second time for the same offence.

30. Each branch shall have the power necessary to provide for its own safety, and the undisturbed transaction of its business; and may punish, by imprisonment, any person not a member, for disrespectful behavior in its presence, obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threatening or abuse of a member for words spoken in debate. But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offence by the ordinary course of law.

31. For words spoken in debate, or any report, motion or proposition made, in either branch, a member shall not be questioned in any other place.

32. Members of the legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same.

33. Senators and delegates shall receive for their services a compensation not exceeding three dollars a day during the session of the legislature, and also ten cents for every mile they shall travel in going to and returning from the place of meeting by the most direct route. The president of the senate and speaker of the house shall, respectively, receive an additional compensation of two dollars a day.

34. Bills and resolutions may originate in either branch, to be passed, amended or rejected by the other.

35. No bill shall become a law until it has been fully and distinctly read on three different days in each branch; unless, in cases of urgency, three-fourths of the members present dispense with this rule.

36. No law shall embrace more than one object, which shall be expressed in its title.

37. On the passage of every bill the vote shall be taken by yeas and nays, and be entered on the journal; and no bill shall be passed by either branch without the affirmative vote of a majority of the members elected thereto.

38. The presiding officer of each branch shall sign, before the close of the session, all bills and joint resolutions passed by the Legislature.

39. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time; and the yeas and nays on any question, if called for by one-fifth of those present, shall be entered on the journal.

ARTICLE V.

EXECUTIVE.

1. The chief exeeutive power shall be vested in a governor, who shall be elected by the voters of the State, and hold his office for the term of two years, to commence on the fourth day of March next succeeding his election. The

person acting as governor shall not be elected or appointed to any other office during his term of service.

2. The governor shall reside at the seat of government; shall receive two thousand dollars for each year of his service, and during his continuance in office shall receive no other emolument from this or any other government.

3. The governor shall be commander-in-chief of the military forces of the State; shall have power to call out the militia to repel invasion, suppress insurrection and enforce the execution of the laws; shall conduct in person, or in such manner as may be prescribed by law, all intercourse with other States; and during the recess of the legislature, shall fill temporarily, all vacancies in office, not provided for by this constitution or the legislature, by commissions to expire at the end of thirty days after the commencement of the succeeding session of the legislature. He shall take care that the laws be faithfully executed; communicate to the legislature at each session thereof the condition of the State, and recommend to their consideration such measures as he may deem expedient. He shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment; and, except when the prosecution has been carried on by the house of delegates, to grant reprieves and pardons after conviction; but he shall communicate to the legislature, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons for remitting, commuting or granting the same.

4. The governor may require information in writing from the officers of the executive department, upon any subject pertaining to their respective offices; and also the opinion, in writing of the attorney general upon any question of law relating to the business of the executive department.

5. Returns of the election of governor shall be made, in the manner and by the persons designated by the legislature, to the secretary of the state, who shall deliver them to the speaker of the house of delegates on the first day of the next session of the legislature. The speaker shall, within ten days thereafter, in the presence of a majority of each branch of the legislature, open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more have the highest and an equal number of votes, one of them shall thereupon be chosen governor by the joint vote of the two branches. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

6. In case of the removal of the governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the seat of government, or inability to discharge the duties of the office, the said office, with its compensation, duties and authority, shall devolve upon the president of the senate; and in case of his inability or failure from any cause to act, on the speaker of the house of delegates. The legislature shall provide by law for the discharge of the executive functions in other necessary cases.

7. A secretary of the state, a treasurer and an auditor shall be elected at the same time, and for the same term as the governor. Their duties shall be prescribed by law. The secretary of the state shall receive thirteen hundred, the treasurer fourteen hundred, and the auditor fifteen hundred dollars per annum.

8. The governor shall nominate, and by and with the advice and consent of the senate, appoint all military officers above the rank of colonel.

ARTICLE VI.

JUDICIARY.

1. The judicial power of the State shall be vested in a supreme court of appeals and circuit courts, and such inferior tribunals as are herein authorized.

2. The State shall be divided into nine circuits. The counties of Hancock, Brooke, Ohio and Marshall shall constitute the first; Monongalia, Preston, Tucker and Taylor, the second; Marion, Harrison and Barbour, the third; Wetzel, Tyler, Pleasants, Ritchie, Doddridge and Gilmer, the fourth; Randolph, Upshur, Lewis, Braxton, Webster and Nicholas, the fifth; Wood, Wirt, Calhoun, Roane, Jackson and Clay, the sixth; Kanawha, Mason, Putnam and Fayette, the seventh; Cabell, Wayne, Boone, Logan, Wyoming and Raleigh, the eighth; and Pocahontas, Greenbrier, Monroe, Mercer and McDowell, the ninth. If the counties of Pendleton, Hardy, Hampshire and Morgan become a part of the State, they shall constitute another circuit, to be called the tenth. And if the counties of Frederick, Berkeley and Jefferson become a part of this State, they shall constitute the eleventh circuit.

3. The legislature may, from time to time, re-arrange the circuits; and after the expiration of five years from the time this constitution goes into operation, and thereafter, at periods of ten years, may increase or diminish the number of circuits, or the number of courts in a year, as necessity may require.

4. For each circuit, a judge shall be elected by the voters thereof, who shall hold his office for the term of six years. During his continuance in office he shall reside in the circuit of which he is judge.

5. A circuit court shall be held in every county at least four times a year, unless otherwise provided by law in pursuance of the third section of this article. The judge may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit.

6. The circuit court shall have the supervision and control of all proceedings before justices and other inferior tribunals, by *mandamus*, *prohibition or certiorari*. They shall, except in cases confided exclusively by this constitution to some other tribunal, have original and general jurisdiction of all matters at law, where the amount in controversy, exclusive of interest, exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors. They shall have appellate jurisdiction in all cases civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal. They shall also have such other jurisdiction, whether supervisory, original, appellate or concurrent, as may be prescribed by law.

7. The supreme court of appeals shall consist of three judges, any two of whom shall be a quorum. They shall be elected by the voters of the state, and shall hold their offices for the term of twelve years; except that of those first elected, one, to be designated by lot in such manner as they may determine, shall hold his office for four years; another, to be designated in like

manner, for eight years; and the third for twelve years; so that one shall be elected every four years after the first election.

8. The supreme court of appeals shall have original jurisdiction in cases of *habeas corpus*, *mandamus* and *prohibition*. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than two hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, road, way, ferry, or landing, or the right of a corporation or county to levy tolls or taxes: and also in cases of *habeas corpus*, *mandamus* and *prohibition*, and cases involving freedom, or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction for felony or misdemeanor in a circuit court, and such other appellate jurisdiction in both civil and criminal cases as may be prescribed by law.

9. When a judgment or decree is reversed or affirmed by the supreme court of appeals, every point made and distinctly stated in writing in the cause, and fairly arising upon the record of the case, shall be considered and decided, and the reasons therefor shall be concisely and briefly stated in writing, and preserved with the records of the case.

10. When any judge of the court of appeals is so situated in regard to any case pending before it, as to make it improper for him to aid in the trial of the same, or is under any other disability, the remaining judges may call to their assistance a judge of the circuit court, who shall act as a judge of the court of appeals in the cases to which such disability relates.

11. Judges shall be commissioned by the governor. The salary of a judge of the supreme court of appeals shall be two thousand, and that of a judge of a circuit court eighteen hundred dollars per annum, and each shall receive the same allowance for necessary travel as members of the legislature.

12. No judge, during his term of service, shall hold any other office, appointment or public trust, under this or any other government, and the acceptance thereof shall vacate his judicial office; nor shall he, during his continuance therein, be eligible to any political office.

13. Judges may be removed from office for misconduct, incompetence or neglect of duty, or on conviction of an infamous offence, by the concurrent vote of a majority of all the members elected to each branch of the legislature, and the cause of removal shall be entered on the journals. The judge, against whom the legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the legislature shall act thereon.

14. The officers of the supreme court of appeals shall be appointed by the court, or by the judges thereof in vacation. Their duties, compensation and tenure of office, shall be prescribed by law.

15. The voters of each county shall elect a clerk of the circuit court, whose term of office shall be four years. His duties and compensation, and the mode of removing him from office, shall be prescribed by law; and when a vacancy shall occur in the office, the judge of the circuit court shall appoint a clerk, who shall discharge the duties of the office until the vacancy is filled.

in any case, in respect to which the clerk shall be so situated as to make it improper for him to act, the court shall appoint a substitute.

16. At every regular election of a governor, an attorney general shall also be elected. He shall be commissioned by the governor; shall perform such duties, and receive such compensation as may be prescribed by law, and be removable in the same manner as the judges.

17. The legislature may establish courts of limited jurisdiction within any incorporated town or city, subject to appeal to the circuit courts.

ARTICLE VII.

COUNTIES AND TOWNSHIPS.

1. Every county shall be divided into not less than three, nor more than ten townships, laid off as compactly as practicable, with reference to natural boundaries, and containing, as nearly as practicable, an equal number of white population, but not less than four hundred. Each township shall be designated, "the township of ——— in the county of ———," by which name it may sue and be sued.

2. The voters of each township, assembled in stated or special township meeting, shall transact all such business relating exclusively to their township as is herein, or may be by law, required or authorized. They shall annually elect a supervisor, clerk of the township, surveyor of roads for each precinct in their township, overseer of the poor, and such other officers as may be directed by law. They shall also, every four years, elect one justice; and if the white population of their township exceeds twelve hundred in number, may elect an additional justice; and every two years, shall elect as many constables as justices. The supervisor, or in his absence, a voter chosen by those present, shall preside at all township meetings and elections, and the clerk shall act as clerk thereof.

3. The supervisors chosen in the townships of each county shall constitute a board, to be known as "the supervisors of the county of ———," by which name they may sue and be sued, and make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. They shall meet statedly at least four times in each year, at the court house of their county, and may hold special and adjourned meetings. At their first meeting after the annual township election, and whenever a vacancy may occur, they shall elect one of their number president of the board; and appoint a clerk, who shall keep a journal of their proceedings, and transact such other business pertaining to his office as may be by them or by law required, and whose compensation they shall fix by ordinance and pay from the county treasury.

4. The board of supervisors of each county, a majority of whom shall be a quorum, shall, under such general regulations as may be prescribed by law, have the superintendence and administration of the internal affairs and fiscal concerns of their county, including the establishment and regulation of roads, public landings, ferries and mills; the granting of ordinary and other licenses; and the laying, collecting and disbursement of the county levies, but all writs of *ad quod damnum* shall issue from the circuit courts. They shall, from time to time, appoint the places for holding elections in the several townships of their county; and shall be the judges of the election, qualifications and returns of their own members, and of all county and township officers.

5. The voters of every county shall elect a sheriff, prosecuting attorney, surveyor of lands, recorder, one or more assessors, and such other county officers as the legislature may from time to time direct or authorize; the duties of all of whom shall be prescribed and defined, as far as practicable, by general laws. All the said county officers shall hold their offices for two years, except the sheriff, whose term of office shall be four years. The same person shall not be elected sheriff for two consecutive full terms, nor shall any person who has acted as deputy of any sheriff be elected his successor, nor shall any sheriff act as the deputy of his successor; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. The duties of all the said officers shall be discharged by the incumbents thereof in person, or under their superintendence. The board of supervisors shall designate one or more constables of their respective counties to serve process and levy executions, when the sheriff thereof is a party defendant in a suit instituted therein, or is under any other disability.

6. The recorder, in addition to the duties incident to the recording of inventories, and other papers relating to estates, and of deeds and other writings, the registering of births, marriages and deaths, and the issuing of marriage licenses, shall have authority, under such regulations as may be prescribed by law, to receive proof of wills and admit them to probate, to appoint and qualify personal representatives, guardians, committees and curators, to administer oaths, take acknowledgments of deeds and other writings, and relinquishments of dower.

7. The legislature shall, at their first session, by general laws, provide for carrying into effect the foregoing provisions of this article. They shall also provide for commissioning such of the officers therein mentioned as they may deem proper, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices, and for accounting for and paying over, as required by law, all money which may come to their hands by virtue thereof. They shall further provide for the compensation of the said officers by fees, or from the county treasury; and for the appointment, when necessary, of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws. When the compensation of an officer is paid from the county treasury, the amount shall be fixed by the board of supervisors, within limits to be ascertained by law.

8. The civil jurisdiction of a justice shall extend to actions of assumpsit, debt, detinue and trover, if the amount claimed, exclusive of interest, does not exceed one hundred dollars, when the defendant resides, or, being a non-resident of the State, is found, or has effects or estate within his township, or when the cause of action arose therein; but any other justice of the same county may issue a summons to the defendant to appear before the justice of the proper township, which may be served by a constable of either township. In case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent, any other justice or constable of the same county may discharge the duties of their respective offices within the said township. The manner of conducting the aforesaid actions, and of issuing summonses and executions, and of executing and making return of the same, shall be prescribed by law; and the legislature may give to justices and constables such civil jurisdiction and powers, within their respective townships, as may be deemed expedient.

9. Every justice and constable shall be a conservator of the peace throughout his county, and have such jurisdiction and powers in criminal cases therein as may be prescribed by law. Jurisdiction of all misdemeanors and breaches of the peace, punishable by fine not exceeding ten dollars, or by imprisonment for not more than thirty days, may be, by law, vested in the justices.

10. Either party to a civil suit brought before a justice, where the value in controversy, or the damages claimed, exceeds twenty dollars; and the defendant, in such cases of misdemeanor or breach of the peace as may be made by law cognizable by a single justice, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six jurors, if demanded, under such regulations as may be prescribed by law.

11. In all cases, an appeal shall lie, under such regulations as may be prescribed by law, from the judgment or proceedings of a justice or recorder, to the circuit court of the county, excepting judgments of justices in assumpsit, debt, detinue and trover, and for fines, where the amount does not exceed ten dollars exclusive of interest and costs, and where the case does not involve the freedom of a person, the validity of a law, or the right of a corporation or county to levy tolls or taxes.

12. No new county shall be formed having an area of less than four hundred square miles; or if another county be thereby reduced below that area; or if any territory be thereby taken from a county containing less than four hundred square miles. And no new county shall be formed containing a white population of less than four thousand; or if the white population of another county be thereby reduced below that number; or if any county containing less than four thousand white inhabitants be thereby reduced in area. But the legislature may, at any time, annex any county containing less than four thousand white inhabitants to an adjoining county or counties as part thereof.

13. The board of supervisors may alter the bounds of a township of their county, or erect new townships therein, with the consent of a majority of the voters of each township interested, assembled in stated township meeting, or in a meeting duly called for the purpose, subject to the provisions of the first section of this article.

14. Nothing contained in this article shall impair or affect the charter of any municipal corporation, or restrict the power of the legislature to create or regulate such corporations.

ARTICLE VIII.

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.

2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing

year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the treasury but in pursuance of appropriations made by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

ARTICLE IX

FORFEITED AND UNAPPROPRIATED LANDS.

1. All private rights and interests in lands in this State, derived from or under the laws of the State of Virginia, prior to the time this constitution goes into operation, shall remain valid and secure, and shall be determined by the laws heretofore in force in the State of Virginia.

2. No entry by warrant on land in this State shall be hereafter made; and in all cases where an entry has been heretofore made, and has been or shall be so perfected as to entitle the locator to a grant, the legislature shall make provision by law for issuing the same.

3. The legislature shall provide for the sale of all lands in this State, heretofore forfeited to the State of Virginia for the non-payment of the taxes charged thereon for the year one thousand eight hundred and thirty-one, or any year previous thereto, or for the failure of the former owners to have the same entered on the land books of the proper county and charged with the taxes due thereon for the said or any year previous thereto, under the laws of the State of Virginia, and also of all waste and unappropriated lands, by proceedings in the circuit courts of the county where such lands are situated.

4. All lands within this State, returned delinquent for non-payment of taxes to the State of Virginia since the year one thousand eight hundred and thirty-one, where the taxes, exclusive of damages, do not exceed twenty dollars; and all lands forfeited for the failure of the owners to have the same entered on the land books of the proper county, and charged with the taxes

chargeable thereon, since the year one thousand eight hundred and thirty-one, where the tract does not contain more than one thousand acres, are hereby released and exonerated from forfeiture, and from the delinquent taxes and damages charged thereon.

5. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the sheriffs' sales for delinquent taxes, and not released or exonerated by the laws thereof, or by the operation of the preceding section, may be redeemed by the former owners, by payment to this State of the amount of taxes and damages due thereon at the time of such redemption, within five years from the day this Constitution goes into operation; and all such lands not so released, exonerated or redeemed, shall be treated as forfeited, and proceeded against and sold as provided in the third section of this article.

6. The former owner of any tract of land in this State sold under the provisions of this article, shall be entitled to receive the excess of the sum for which such tract may be sold over the taxes and damages charged and chargeable thereon, and the costs, if his claim be filed in the Circuit Court which decreed the sale, within two years thereafter.

ARTICLE X.

EDUCATION.

1. All money accruing to this State, being the proceeds of forfeited, delinquent, waste and unappropriated lands; and of lands heretofore sold for taxes and purchased by the State of Virginia, if hereafter redeemed, or sold to others than this State, all grants, devises or bequests that may be made to this State for the purposes of education or where the purposes of such grants, devises or bequests are not specified; this State's just share of the Literary Fund of Virginia, whether paid over or otherwise liquidated, and any sums of money, stocks or property which this State shall have the right to claim from the State of Virginia for educational purposes; the proceeds of the estates of all persons who may die without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporation hereafter created; all monies that may be paid as an equivalent for exemption from military duty; and such sums as may from time to time be appropriated by the Legislature for the purpose, shall be set apart as a separate fund, to be called the School Fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State; and the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said interest remaining unexpended at the close of a fiscal year, shall be added to, and remain a part of, the capital of the School Fund.

2. The Legislature shall provide, as soon as practicable, for the establishment of a thorough and efficient system of free schools. They shall provide for the support of such schools by appropriating thereto the interest of the invested school fund; the net proceeds of all forfeitures, confiscations and fines accruing to this State under the laws thereof; and by general taxation on persons and property, or otherwise. They shall also provide for raising, in each township, by the authority of the people thereof, such a proportion of

the amount required for the support of free schools therein as shall be prescribed by general laws.

3. Provision may be made by law for the election and prescribing the powers, duties, and compensation of a general Superintendent of free schools for the State, whose term of office shall be the same as that of the Governor; and for a County Superintendent for each county; and for the election, in the several townships, by the voters thereof, of such officers, not specified in this Constitution, as may be necessary to carry out the objects of this article; and for the organization, whenever it may be deemed expedient, of a State Board of Instruction.

4. The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

ARTICLE XI.

MISCELLANEOUS.

1. No lottery shall be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery shall he prohibited.

2. No charter of incorporation shall be granted to any church or religious denomination. Provision may be made by general laws for securing the title to church property, so that it shall be held and used for the purposes intended.

3. The Circuit Courts shall have power, under such general regulations as may be prescribed by law, to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities; but relief shall not be granted by special legislation in such cases.

4. Laws may be passed regulating or prohibiting the sale of intoxicating liquors within the limits of this State.

5. The Legislature shall pass general laws whereby any number of persons associated for mining, manufacturing, insuring or other purpose useful to the public, excepting banks of circulation and the construction of works of internal improvement, may become a corporation, on complying with the terms and conditions thereby prescribed; and no special act incorporating, or granting peculiar privileges to any joint stock company or association, not having in view the issuing of bills to circulate as money or the construction of some work of internal improvement, shall be passed. No company or association, authorized by this section, shall issue bills to circulate as money. No charter of incorporation shall be granted under such general laws, unless the right be reserved to alter or amend such charter at the pleasure of the Legislature, to be declared by general laws. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the same, shall be passed, unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law.

6. For the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties and be compact. Each district shall contain, as nearly as may be, an equal federal number, to be determined according to the rule prescribed in the second section of the first article of the Constitution of the United States.

7. The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein.

8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature. All offences against the laws of Virginia heretofore committed within the boundaries of this State shall be cognizable in the Courts of this State, in the same manner they would be if hereafter committed within this State. All civil and criminal suits and proceeding pending in the County or Circuit Courts of the State of Virginia, held within the said boundaries, shall be docketed and thereafter proceeded in before the Circuit Court of the proper county; and all such suits and proceedings pending in the Supreme and District Courts of Appeals of the State of Virginia, if the defendant in the court below resides within the said boundaries, or the subject of the suit is land or other property situated or being therein, and the plaintiff is entitled to prosecute in this State, shall be docketed, and thereafter proceeded in before the Supreme Court of Appeals thereof.

9. The records, books, papers, seals and other property and appurtenances of the former Circuit and County Courts, within the State of West Virginia, shall be transferred to, and remain in, the care and custody of the Circuit Courts of the respective counties; to which all process outstanding at the time this Constitution goes into operation shall be returned, and by which new process in suits then pending, or previously determined, in the said former Courts, may be issued in proper cases. Copies and transcripts of the records and proceedings of the said former Courts shall be made and certified by the Courts having the care and custody of such records and proceedings, or the proper officers thereof, and shall have the same force and effect as if they had been heretofore properly made and certified by the said former Courts.

ARTICLE XII.

AMENDMENTS.

1. No convention shall be called, having authority to alter the constitution of the State, unless it be in pursuance of a law passed by the affirmative vote of a majority of the members elected to each branch of the legislature, and providing that polls shall be held throughout the State, on some day therein specified, which shall be not less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a convention. And such convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall members be elected to such convention, until at least one month after the result of the polls shall be duly ascertained, declared and published. And all acts and ordinances of said convention shall be submitted to the voters of the State for ratification, or rejection, and shall have no validity whatever, until they are ratified, and in no event shall they, by any shift or device, be made to have any retrospective operation or effect.

2. Any amendment to the constitution of the State may be proposed in either branch of the legislature; and if the same, being read on three several days in each branch, be agreed to on its third reading, by a majority of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and referred to the legislature at the first session to be held after the next general election, and shall be published, at least three months before such election, in some newspaper in every county in which a newspaper is printed. And if the proposed amendment be agreed to during such session, by a majority of the members elected to each branch, it shall be the duty of the legislature to provide by law for submitting the same to the voters of the State, for ratification or rejection. And if a majority of the qualified voters, voting upon the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the constitution of the State. If two or more amendments be submitted at the same time, the vote on the ratification or rejection, shall be taken on each separately.

CORPORATIONS.

HAMPSHIRE AND BALTIMORE COAL COMPANY.

I, J. Edgar Boyers, secretary of the state of West Virginia, hereby certify that a copy of three resolutions, passed by the stockholders of the Hampshire Mining Company, a corporation chartered by an act of the general assembly of Virginia, passed March fifteenth, eighteen hundred and fifty-eight, and now existing in the state of West Virginia, and engaged in the mining of coal near Piedmont, in said State; in a general meeting of said stockholders duly called and held at their chief office in the city of New York, on the twenty-eighth day of November, eighteen hundred and sixty-three; which resolutions were duly certified by the president of said company, under his signature and the common seal thereof, and delivered to me this day. Said resolutions are in the following words:

Resolved, "That the stockholders of said Hampshire Mining Company deem it advisable, and desire to increase the amount of the capital stock of said company, and to change the par value of the shares of said stock. That it is proposed to increase the amount of its said capital stock to five hundred thousand dollars, and to diminish the par value of the shares thereof to ten dollars per share, so that the capital stock of stock of said company shall consist of fifty thousand shares of ten dollars each."

Resolved, "That the stockholders of the Hampshire Mining Company incorporated by an act of the general assembly of the state of Virginia, passed March fifteenth, eighteen hundred and fifty-eight, and now doing business in Hampshire county, West Virginia, deem it advisable, and desire to change the name of said company."

Resolved, "That said stockholders desire and intend that said corporation shall hereafter, as soon as the same may be legally done, be known by the name of "Hampshire and Baltimore Coal Company," and said last mentioned name is hereby adopted as the future corporate name of said corporation, from and after such date as the same may be legally used and employed."

Wherefore, I, J. Edgar Boyers, secretary of the state of West Virginia, do hereby declare the amount of the capital stock of said company to be increased to five hundred thousand dollars; and the par value of the shares thereof, diminished to ten dollars per share, so that, the capital stock of said company shall consist of fifty thousand shares, of ten dollars each.

And, I do hereby, as aforesaid, further declare, the name of said company changed, and to be known from this date as the Hampshire and Baltimore Coal Company.

Given under my hand and the great seal of the state of West Virginia, at the city of Wheeling, this, the sixteenth day of December, in the year of our Lord, one thousand eight hundred and sixty-three, and of the State the first.

J. EDGAR BOYERS,
Secretary of the State.

{ SEAL. }

A LIST OF COMMISSIONERS

In other States, &c., appointed by the Executive of West Virginia, during the years 1863 and 1864, with the residence and date of appointment of each commissioner; also the date when evidence of his qualification was filed. [The term of office of commissioners is two years.]

States, &c.	Names of Commissioners.	Residence.	Date of Appointment	When evidence of Qualification filed.
Illinois.....	Philip A. Hoyne,.....	Chicago,.....	October 26, 1663.	November 4, 1863.
Maryland,.....	Henry R. Root,.....	Baltimore,.....	September 23, 1863.	September 28, 1863.
New York,.....	J. B. Nones,.....	New York City,.....	September 5, 1863.	September 5, 1863.
New York,.....	Sylvester Lay,.....	New York City,.....	September 15, 1863.	September 15, 1863.
New York,.....	Joseph W. Wildey,.....	New York City,.....	November 25, 1863.	December 3, 1863.
Pennsylvania, ...	Theodore D. Rand,.....	Philadelphia, ...	September 5, 1863.	.....
Pennsylvania, ...	C. G. Childs,.....	Philadelphia, ...	December 2, 1863.	December 30, 1863.
Pennsylvania, ...	Alister M. Grant,.....	Philadelphia, ...	January 4, 1864.	January 4, 1864.

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